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REPORT

OF THE

BIPARTISAN TASK FORCE ON ETHICS

ON

H.R. 3660

TO AMEND THE RULES OF THE HOUSE OF REPRESENTATIVES AND THE ETHICS IN GOVERNMENT ACT OF 1978 TO PROVIDE FOR GOVERNMENT-WIDE ETHICS REFORM, AND FOR OTHER PURPOSES

NOVEMBER 15, 1989

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BIPARTISAN TASK FORCE ON ETHICS

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ROY A. DYE, *Staff Director*
DON WOLFENSBERGER, *Co-Counsel*

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LETTER OF TRANSMITTAL

BIPARTISAN TASK FORCE ON ETHICS
U. S. House of Representatives

November 15, 1989

The Speaker
The Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker and Mr. Minority Leader:

We are pleased to transmit to you today the final report and recommendations of the Bipartisan Task Force on Ethics.

As you know, we were appointed by the Speaker and Minority Leader last February 19 with the charge of conducting a comprehensive review of all rules, laws and regulations relating to the conduct of House Members in their official capacities. Specifically, we were asked to recommend any changes that would enhance Members' understanding of and compliance with these standards of official conduct and thereby help to restore public confidence in the integrity of this institution.

The task force had the unique perspective and opportunity of operating on a completely bipartisan basis -- seven Democrats and seven Republicans. We feel this experience has enabled us to develop a package that transcends partisanship and speaks directly to the needs of the Congress and the American people.

On the basis of our seven months of hearings and deliberations, we feel we have devloped the kind of ethics package that meets the criteria you have set for us and that can be supported and adopted by a majority of our colleagues.

We therefore commend to your consideration and that of the House the findings and recommendations of the task force contained in this report and in our proposed legislation entitled, "The Government Ethics Reform Act of 1989."

Sincerely yours,

Vic Fazio

VIC FAZIO
Chairman

Lynn Martin

LYNN MARTIN
Co-Chair

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INTRODUCTION

The Bipartisan Task Force on Ethics was appointed on February 2, 1989 by Speaker Jim Wright and Republican Leader Representative Bob Michel to conduct a comprehensive review of House ethics rules and regulations.

The task force was charged with reviewing all rules, regulations and statutes governing the official conduct of Members of the House, and recommending changes that will both enhance Members' understanding and compliance with the rules and increase public respect for the integrity of the institution.

The principle areas addressed by the task force were (1) acceptance of gifts: (2) honoraria and outside earned income; (3) ethics committee procedures; (4) financial disclosure; and (5) use of official resources. During the course of its review, the task force also examined issues relating to the compensation of Members and other high government officials.

The task force recommendations amount to the most far-reaching government-wide ethics legislation in over a decade. The reform proposals build on the fundamental principles established by the Commission on Administrative Review, known as the Obey Commission, in 1977, and simplify the rules to enhance Members' understanding and compliance.

PURPOSE OF THE BILL

The purpose of the bill is to restore public confidence in the integrity of government officials by promoting the highest professional and ethical standards in public service.

WORK OF THE TASK FORCE

The task force began its work by reviewing existing rules and identifying those areas where there is confusion among Members due to ambiguities or inconsistencies in various rules, regulations and laws. It also examined areas where there was lax compliance or an obvious need to strengthen certain rules.

The goal of the task force from the beginning has been to strengthen and clarify rules where necessary, but more importantly to simplify and bring a greater degree of rationality and practicality to the rules under which Members must operate on a daily basis.

After preliminary organizational meetings, the task force began weekly meetings and briefings in late March. One of the first sessions the task force held was a meeting with Judge Malcolm Richard Wilkey, chairman of the President's Commission on Federal Ethics Law Reform, which had just issued its report, "To Serve With Honor," on March 9, 1989. On April 12, President Bush submitted his proposed "Government-Wide Ethics Act of 1989," based on the Wilkey Commission's recommendations.

Most helpful to the task force in its work was its direct input from Members both in survey responses and private interviews. The task force circulated surveys to all House Members in April (and recirculated in July), soliciting their views on existing rules and any suggestions for change. All told, the task force received over 75 responses from a broad cross-section of Democratic and Republican Members.

In addition, in June and July, the task force invited all Members to meet privately in executive session to discuss in detail both their observations and problems with existing rules and to make any recommendations for improvements in the current system. In the course of four such sessions running several hours each, the task force heard from 30 Members, and received very valuable assistance in shaping the final ethics package.

In addition to its weekly deliberations and interviews, the task force held four public hearings during the course of its review, all of which were broadcast to the public through C-SPAN. On May 3, 1989, the task force heard testimony from a panel of Members who have played important roles over the years in the development of the original ethics code and subsequent reforms. These included Representatives Charles Bennett, Lee Hamilton, Bill Frenzel and Don Edwards. Former Representatives John Anderson, John Buchanan, Otis Pike and Charles Whalen also contributed their views and suggestions on ethics issues. Former Representative Richardson Preyer, who chaired the Select Committee on Ethics in the 95th Congress, submitted a statement for the record.

On May 24, 1989, the task force held a hearing on the President's proposed ethics legislation, and on the recommendations of both the Wilkey Commission and the National Commission on Public Service chaired by Paul Volcker. Witnesses included Assistant Attorney General Edward Dennis, former Senator Charles Mathias, Volcker Commission members Lloyd Cutler, Norman Ornstein, and Nancy Neuman, and Professor Dennis Thompson of Harvard University and Professor James C. Kirby of the University of Tennessee.

On July 12, the task force heard testimony on enforcement procedures of the Committee on Standards of Official Conduct from attorneys John Nields and William Oldaker. In executive session, the task force also discussed the role of the committee with Standards Committee Chairman Julian Dixon and Ranking Minority Member John Myers.

On September 24, the task force conducted a hearing on congressional ethics and the role of the media. The first panel consisted of academicians Bruce Jennings, Stephen Hess, and Michael Josephson. The second panel included journalists Tom Oliphant, Sara Fritz, and Ken Bode.

All four of the hearings have since been published by GPO in a single hearing document entitled, "Congressional Ethics Reform: Hearings Before the Bipartisan Task Force on Ethics."

The task force divided its work into subgroups of two Members each—one Republican and one Democratic—to investigate problems and options in specific areas and report back to the full group their findings and recommendations. The subgroups covered the following areas: use of official resources; gifts, travel expenses and finan-

cial disclosure; the role and enforcement procedures of the ethics committee; honoraria, outside employment, and compensation-setting procedures; and conflict of interest rules and laws.

The subgroups began reporting back to the full panel in July, and by late September the task force had considered the various options developed by the subgroups and had made some preliminary decisions. These preliminary decisions were then discussed with the members and staff of the various committees of jurisdiction, as well as with the leadership on both sides.

The month of October was spent further refining the ethics package on the basis of these wide-ranging discussions. Early in November, the task force began its final round of discussions with leadership, committee representatives, the Senate counterpart task forces and the Administration.

Out of this process has developed a strong, workable ethics reform package that is built on myriad compromises both within the group and without, and which holds together a fundamental strengthening of House rules and government-wide ethics laws.

SUMMARY OF THE BILL

TITLE I—LIMITATIONS ON OUTSIDE EMPLOYMENT AND ELIMINATION OF HONORARIA

Members, officers and non-career employees of the Federal government earning at the GS–16 grade pay level and above could not have outside earned income of more than 15% of Executive Level II salary beginning in 1991;

Honoraria would be prohibited for all government Members, officers and non-career employees beginning in 1991;

Payments in lieu of honoraria could be donated on behalf of a Member, officer of employee to a charity provided any such payment does not exceed $2,000, does not financially benefit the individual or immediate family member and is not received or counted for tax purposes.

Members, officers and employees could not be affiliated with or employed by a professional service firm which involves a fiduciary relationship, for compensation, or practice a profession involving a fiduciary relationship for compensation;

Members, officers, or employees could serve on boards of directors without compensation; and could teach with compensation if approved by the supervising ethics office;

The above provisions do not apply to the Senate;

Executive branch employees required to divest holdings for conflict of interest reasons could defer taxes on the gain by reinvesting in an approved neutral instrument within 60 days.

TITLE II—FINANCIAL DISCLOSURE

Payments made to charities in lieu of honoraria would be disclosed beginning in 1991 by source and amount, but the identity of the recipient charity would be filed in confidence with the supervising ethics office; spousal honoraria must be reported by source and amount;

More detailed reporting of travel expenses would be required;

Gifts and travel reimbursement thresholds for reporting would be made uniform at $200 from any source;

Financial disclosure reporting categories would be broadened to range from less than $15,000 to over $1-million;

Blind trust requirements would be tightened to ensure the independence of the trustee, and the total value of trust assets would be disclosed;

Termination reports would be required on May 15 or 30-days after leaving government, whichever occurs later;

Civil penalties would be increased from $5,000 to $10,000 for knowing and willful failure to file or false filings.

Title III—Citizens's Commission on Public Service and Compensation

The quadrennial commission on executive, legislative and judicial salaries would be reconstituted as a Citizens' Commission on Public Service and Compensation consisting of 11 members, including 6 chosen by lot from registered voters, and 5 appointed by the President, Congress, and Judiciary;

The commission would first be appointed in fiscal 1993; the President would submit his recommendations in January of 1994;

The president's recommendation would be subject to a privileged joint resolution of approval if offered by the majority leader within 60-days;

No recommendation or other pay increase could take effect in the same Congress or without an intervening House election;

The 1989 and 1990 COLAs (4.1% and 3.6%) would be restored for Congress (except the Senate) and executive and judicial branch senior officials denied these adjustments;

Senior officials of the three branches (except for Senators) would receive a 25% salary increase in 1991 as part of the ban on honoraria and new restrictions on outside income;

Future annual COLAs for senior officials would be tied to the Economic Cost Index for private industry salaries minus .5%, and could never exceed 5%.

Title IV—Miscellaneous Statutory Changes

Various statutory changes from the President's ethics package relating to conflicts of interest would be included;

The incidental use of government and officially leased vehicles would be permitted subject to regulations; House Administration Committee is directed to adopt such regulations for the House;

The "grandfather clause" on coverting campaign funds would be repealed for Members after the 102nd Congress, and Members could not covert more than held by their campaign fund on the date of enactment.

Title V—House Rules Changes

Gifts from any source would be prohibited other than from relatives, gifts of personal hospitality, and those not aggregating more than the minimal amount permitted under the Foreign Gifts and Decorations Act (now $180); gifts under $75 would not be counted towards aggregate and meals or beverages consumed which are not in connection with overnight lodging would be exempt; waivers

from the ethics committee are authorized in exceptional circumstances;

The anti-discrimination provisions in various House rules, regulations and elsewhere would be consolidated in the Code of Official Conduct;

The current rule prohibiting Members from retaining staff who do not perform work commensurate with their pay would be amended to extend to officers and committees and to ensure staff are performing officials duties in the offices of their employing authority;

The Committee on Standards of Official Conduct would be expanded from 12 to 14 members in 1991 and would be required to "bifurcate" its investigative and adjudicative functions into separate subcommittees; reports would be required on any investigative undertaken; right to counsel on the House floor would be allowed for accused Members; a three-term statute of limitations would apply to investigations unless violations are related to more recent offenses; an Office of Advice and Education would be created in the ethics committee to assist with inquiries and advisory opinions and conduct periodic briefings and seminars for Members, staff and spouses to acquire them with ethics rules.

The honoraria ban and outside income limits and restrictions to be effective in 1991 would be incorporated in House rules.

A 4-day limit on domestic private travel and 7-day limit on foreign travel paid by private sources would be imposed, with waiver authority granted to the ethics committee.

TITLE VI—SENATE RULES CHANGES [To be provided by Senate]

DISCUSSION OF ISSUES

1. Acceptance of Gifts

BACKGROUND

Members of Congress and House employees are often given gifts by relatives, friends, and business acquaintances. Most often there is nothing improper concerning receipt of such gifts by Members and employees.

However, acceptance of substantial gifts by a Member of Congress from parties with an interest in legislation creates a potential conflict of interest for the Member. Valuable gifts to Members from persons other than relatives or personal friends may also create at least the appearance of impropriety.

Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts or favors from private interests may affect public confidence in the integrity of the individual and in the institution of the Congress. Legitimate concerns of favoritism or abuse of public position may be raised by disclosure of frequent or expensive gifts from representatives of special interests, or valuable gifts from anyone other than a relative or personal friend.

Thus, Members and employees of the House are always cautioned to exercise discretion concerning the acceptance of any gifts, favors, or entertainment from persons who are not family members or personal friends. They should be particularly sensitive to the source and value of a gift, the frequency of gifts from one source, and possible motives of the donor.

Current House Rules and Statutes

The House gifts rule, as first adopted in 1968, prohibited acceptance of gifts "of substantial value" from any person or organization having a direct interest in legislation before the Congress. The Commission on Administrative Review of the 95th Congress (the Obey Commission) noted the obvious problems of interpretation and recommended that the rule be amended so that it is less subjective and therefore more enforceable.

House Rule XLIII, clause 4 prohibits a Member, officer or employee of the House from accepting gifts aggregating $100 or more in value in a calendar year from any person having a direct interest in legislation before the Congress, or from a foreign national. Exempted are gifts with a value of $50 or less, gifts from relatives, and gifts of personal hospitality of an individual.

Persons with a direct interest in legislation are defined to include (1) registered lobbyists, and persons or organizations which retain a lobbyist; (2) corporations or organizations which maintain a political action committee, and the officers or directors of such

organizations; and (3) any other individual or organization "which the Member or employee knows has a distinct or special interest in influencing or affecting the Federal legislative process which sets such individual or organization apart from the general public."

Advisory Opinions issued by the Select Committee on Ethics of the 95th Congress determined that necessary travel expenses (transportation, food and lodging) provided to a Member or employee in connection with (1) an event in which he substantially participates, or (2) a fact-finding event directly related to official duties, are not considered to be gifts for purposes of the rule. The first exemption, for speaking engagements and similar events, also applies to the expenses of the spouse or other family member. The second exemption, for fact-finding events, also applies to the expenses of the spouse but only in the case of foreign travel.

The Constitution prohibits government officials from accepting gifts from foreign governments without the consent of Congress. The Foreign Gifts and Decorations Act (5 U.S.C. 7342) gives consent to acceptance of gifts of "minimal value" as established by the General Services Administration (currently, $180). Gifts of more than minimal value may be accepted on behalf of the United States if refusal might cause offense or embarrassment, and must be turned over to the Clerk of the House within 60 days. Gifts of travel taking place entirely outside of the United States offered by a foreign government may be accepted when the travel relates directly to official duties.

There is also a statutory prohibition against acceptance of gifts, special favors or anything of value by a Federal official "for or because of any official act performed or to be performed by him," (18 U.S.C. 201c). Unlike the related bribery offense (section 201b), an explicit *quid pro quo* need not exist to prove an offense of the illegal gratuity statute. The gratuity or thing of value need only be related in some way to an official's actions.

ISSUES

There are two main problems with the current rule prohibiting acceptance of gifts of $100 or more from any person with a direct interest in legislation: (1) it is too subjective in determining who has a direct interest in legislation; and (2) the dollar limit and the secondary limit for de minimis gifts are so low as to be impractical and unworkable.

It is often impractical, if not impossible, for Members to ascertain whether a donor has a direct interest in legislation, particularly in cases where the Member and donor have a long-standing personal relationship. The current rule specifically includes lobbyists and PACs as prohibited sources. However, the third broad category, which includes any person who has a special interest in the legislative process which sets that person apart from the general public, provides little guidance for Members and is subject to varying interpretations.

It is also difficult, and at times embarrassing, for a Member to determine whether lodging or entertainment provided by a friend on his property satisfies the personal hospitality exemption. It may be impossible for a Member to know for certain, for example,

whether a friend's vacation property is owned by him or by the friend's business, or whether the Member's use of the property is a deductible business expense, or whether the friend is being reimbursed by his business.

Another concern is that the present limits do not reflect the impact of inflation, nor is there any provision to maintain realistic levels regarding the value of acceptable gifts. The $100 limit has remained unchanged for 12 years, while the exemption for gifts of $35 or less was increased to $50 in 1987. If adjusted by the rate of inflation over the past 12 years, the gifts limits would have more than doubled in value.

There are also needless problems caused by the different dollar thresholds in the gifts prohibition in House Rules and the statutory financial disclosure requirements applicable to gifts. The rule and the statute should be uniform to avoid confusion and enhance compliance and enforcement.

The principal issue concerning the acceptance of travel expenses in connection with speaking engagements and other events is the public perception that such trips often may amount to paid vacations for the Member and his family at the expense of special interest groups. There is also confusion over the different circumstances under which the spouse or another family member may accompany the Member on such trips. A further issue is the inadequate reporting of such travel expenses in the annual financial disclosure statements. While the reporting instructions require a brief description of the itinerary and the nature of the expenses provided, that basic information is often omitted, nor is there any requirement to indicate the dates of the trip.

There is also concern regarding the illegal gratuities statute, 18 U.S.C. 201(c), and its potential application to incidental or de minimis gifts to Members and employees. The Department of Justice has taken the expansive view that gifts of appreciation or goodwill may be subject to criminal prosecution under this statute. For example, a bottle of domestic wine given to a Member at the end of the year with a note from the donor expressing gratitude for his legislative work during the past session of Congress could be a prosecutable offense under the Department's interpretation.

RECOMMENDATIONS

Gifts Rule

The task force proposes to amend Rule XLIII, clause 4 and relevant committee interpretations in order to clarify and simplify the gifts rule by establishing a precise standard that is clearly understood by Members and employees and easily enforced by the Standards Committee.

The recommendations follow:

Prohibited Sources.—The rules change eliminates any question as to whether a donor has a direct interest in legislation by prohibiting acceptance of gifts of more than "minimal value" from all sources other than a relative. Specific waivers may be granted by the Standards Committee in exceptional circumstances. The definition of a relative is amended to include fiance or fiancee, consistent with the definition in the Ethics in Government Act.

Dollar Limits.—The dollar limit will conform to the minimal value established under the Foreign Gifts and Decorations Act. That value is currently defined as $180, and is expected to be increased to $200 on January 1, 1990. It is adjusted every three years by the General Services Administration. The dollar limit for gifts that are not aggregated is increased to $75. Both the $200 and $75 limits that will take effect in 1990 represent an inflation adjustment from the original limits of $100 and $35 set in 1977.

Specific Waivers.—The bill permits waivers from the gifts rule and specifically authorizes the Standards Committee to grant waivers in exceptional circumstances. The task force expects that the dollar limit, adjusted every three years, will remain at a reasonable level that will not interfere with normal social relationships or the customary gift-giving between personal friends. However, given the application of the gifts rule to all sources, it is essential to provide some flexibility to allow the acceptance of gifts above the limit in cases where there is no potential conflict of interest or appearance of impropriety.

The task force recommends that the committee develop guidelines and procedures for the granting of waivers. As a general rule, it is intended that such exceptions from the gifts prohibition would be appropriate in the case of gifts from individuals who have a long-standing personal or social relationship with the Member or employee, where it is clear that it is those relationships that are the motivating factors of the gift, rather than the fact of the individual's office or position in the Congress.

Such waivers must be requested in writing by the Member, officer, or employee, and would be considered by the chairman and ranking minority member, acting on behalf of the committee, on a strictly confidential basis. The request for and grant of a waiver would not be made available to the public. However, in the case of financial disclosure reports under the Ethics in Government Act, any gift over $200 in value must be publicly disclosed, unless a publicly available request for a waiver is granted. Therefore, a second waiver would be needed if the individual is required to file a disclosure statement and wanted to keep the gift a confidential matter.

Personal Hospitality.—The task force proposes to clarify the existing personal hospitality exemption and establish strict criteria governing that exemption. The bill directs the Standards Committee to amend its formal advisory opinions interpreting the gifts rule to prohibit lodging received as personal hospitality from any individual (other than a relative) in excess of 30 days in a calendar year unless a written waiver is granted by the committee. The task force also directs the committee to clarify the personal hospitality exemption as follows:

If a Member receives apparent personal hospitality from an individual for more than *four days or three nights* in a calendar year, then the Member or his staff must make a documentable effort to determine whether the hospitality in fact meets the criteria for the exemption by making appropriate inquiries. Examples of documentable efforts to make such a determination include contemporaneous written memoranda concerning conversations between the Member and the person providing the hospitality, or written communications between them, which clearly describe the criteria for

personal hospitality, and seek to determine whether the hospitality meets that criteria.

The criteria for exemption, as described by the Standards Committee, is that the hospitality is for a nonbusiness purpose on property or facilities owned by that individual or his family, none of the costs of which are deducted as a business expense. If the hospitality meets that criteria, the Member may accept personal hospitality from that individual for up to 30 days in a calendar year. The 30-day limit may not be exceeded unless a written waiver is granted by the committee. A waiver might be granted, for example, in the case of a Member who customarily stays overnight in a friend's house whenever he visits his congressional district.

On the other hand, if the apparent personal hospitality is provided for four days or less in a calendar year, absent clear indications that it is not personal hospitality, the Member may rely in good faith on the apparent personal nature of the hospitality.

The task force expects the committee, in its revised advisory opinion, to provide a sample form or letter for the use of Members and employees in making a documentable effort to determine if a particular gift of personal hospitality qualifies for the exemption.

Food and Beverage.—The bill directs the Standards Committee to exempt gifts of food and beverage which are not in connection with a gift of overnight lodging. This exemption applies to meals provided by an individual who is not also providing a gift of overnight lodging to the Member or employee. The intent of this exemption is to allow Members, officers, and employees to accept meals and beverage in the Washington, D.C. area without regard to the cost, and thus relieve them of the burden of keeping account of the cost of their portion of a restaurant meal as someone's guest.

While most meals would probably be excluded under the specific exemption for gifts valued at $75 or less, as proposed by the task force, the cost of a dinner at some restaurants in the Washington area could approximate or exceed that amount. If there were any doubt, without this blanket exemption, the Member would be obliged to ask the host whether the cost of his meal exceeded $75, particularly if the Member's spouse was also a dinner guest. In the event that the cost of the meal for each was $80, for example, the Member would be deemed to have accepted two gifts aggregating $160 in value from that person.

The proposed exemption for meals not in connection with overnight lodging is consistent with the intent of the original de minimis exemption adopted in 1977. That intent was to avoid unnecessarily burdensome recordkeeping requirements and to disregard insignificant gifts that are irrelevant to potential conflicts of interest.

The exemption applies only to meals and beverage provided for immediate consumption. It would not extend, for example, to a gift of a case of imported wine or other consumable items that are not intended for immediate consumption. Such gifts would be subject to the general rule prohibiting gifts aggregating more then minimal value, and excluding gifts valued at $75 or less.

Travel Expenses

The bill directs the Standards Committee to amend its advisory opinions concerning acceptance of travel expenses in connection

with speaking engagements and similar events to establish a limit on the duration of such trips. The task force proposes to prohibit acceptance of such expenses for more than four consecutive days in the case of domestic travel and seven consecutive days (excluding travel days) in the case of foreign travel.

Acceptance of such travel expenses (food, lodging, and transportation) is permitted under current rulings in connection with speeches and other events in which the Member or employee substantially participates, and fact-finding events directly related to official duties.

The four-day domestic limit would apply to travel within the continental United States, and the seven-day foreign travel limit would apply to travel outside the continental United States. The exclusion of travel days in the case of foreign travel is intended to allow a day of travel to one's destination and a day of travel for the return trip. The task force expects that the committee will provide further guidance on this exclusion in its advisory opinions.

The bill authorizes the Standards Committee to grant prior written waivers from the four-day and seven-day limits in exceptional circumstances. The committee may grant a waiver, for example, with respect to a single conference or similar event that is held at one location and requires significant participation by the Member or employee throughout its duration. A waiver may also be granted in the case of foreign educational conferences sponsored by nonprofit, tax exempt organizations, such as those sponsored by The Aspen Institute.

As a general rule, the task force intends that the duration limits could not be circumvented in the case of different sponsoring organizations providing expenses for a single conference or meeting at one location. However, in some circumstances, it would be acceptable for a Member or employee to attend separate events with different sponsors at the same location and stay beyond the four-day limit. The task force expects that the committee will provide guidelines on the application of the duration limits and establish criteria for the granting of waivers in exceptional circumstances.

The task force emphasizes that it recommends no change in the current interpretations which limit acceptance to necessary travel expenses (food, lodging and transportation). Any entertainment provided during such a trip is considered a gift and is subject to the limitations of the gifts rule.

The Standards Committee is also directed to amend its advisory opinions to allow the Member, officer, or employee to also accept travel expenses for one relative in connection with both foreign and domestic fact-finding events, as well as for substantial participation events. This change would make the current rules uniform and thus end the confusion about the circumstances under which the spouse or other family member may accompany a Member or employee on such trips. Under the task force proposal, a Member or employee would be free to accept travel expenses for the spouse *or* another relative in lieu of the spouse, when participating in such events. It should be noted that the disclosure of any such travel reimbursements in annual financial disclosure reports should indicate that expenses were also provided for one relative.

Government-wide Gifts Rule

The bill establishes a new government-wide rule on acceptance of gifts by Members, officers, or employees of the government. The amendment to title 5 of the U.S. Code would prohibit Federal employees from accepting gifts from anyone who is seeking official action from the individual or his employing agency, conducting activities regulated by the agency, or whose interests may be substantially affected by the employee's official duties. This prohibition would not apply in the case of gifts that are permissible in accordance with rules and regulations issued by the individual's supervising ethics office.

The bill specifically authorizes the House and Senate ethics committees, the Judicial Ethics Committee, and the Office of Government Ethics to implement this gifts prohibition and provide reasonable exceptions, and provides that Members and employees may accept gifts pursuant to regulations established by those offices.

The intent of this provision is to establish in statute that Members and employees may accept token gifts of appreciation or goodwill, and other gifts as authorized by the appropriate ethics office. This statutory authority would bar any possible prosecution under the illegal gratuities statute for acceptance of a gift of minimal value that may bear some relation to official actions.

2. Honoraria and Outside Earned Income

BACKGROUND

The current limitations on outside earned income and honoraria were prompted by three major considerations: First, substantial payments to a Member of Congress for rendering personal services to outside organizations presents a significant and avoidable potential for conflict of interest; second, substantial earnings from other employment is inconsistent with the concept that being a Member of Congress is a full-time job; and third, substantial outside earned income creates at least the appearance of impropriety and thereby undermines public confidence in the integrity of government officials.

In developing its recommendations on outside earned income, the Obey Commission noted that earned income creates a variety of more serious potential conflicts of interest than does unearned or investment income, ranging from overt attempts to curry favor by private groups to subtle distortions in the judgment of Members on particular issues. The earned income limitation was intended to assure the public that (1) Members are not using their positions of influence for personal gain or being affected by the prospects of outside income; and (2) outside activities are not detracting from a Member's full-time attention to his or her official duties.

CURRENT HOUSE RULES AND STATUTE

House Rule XLVII limits outside earned income of Members (including honoraria) to 30 percent of annual congressional salary ($26,850 at the current salary level of $89,500). The Federal Election Campaign Act (2 U.S.C. 44li) limits any single honorarium that may be accepted by any Member, officer, or employee of the

Federal Government to $2,000 for any single speech, appearance, or article.

The Supplemental Appropriations Act of 1983 (2 U.S.C. 31–1) limits annual honoraria income of Members of Congress (both Representatives and Senators) to 40 percent of their annual salary ($35,800 currently).

There is no rule or statute that specifically prohibits Members or employees from engaging in outside employment activities. However, clause 3 of Rule XLIII prohibits a member or employee from receiving compensation by virtue of influence improperly exerted from his position in Congress. In addition, the Code of Ethics for Government Service provides that a Member or employee should never accept "benefits under circumstances which might be construed by reasonable persons as affecting the performance of his government duties."

Certain other restrictions are placed upon particular outside compensation or endeavors, including restrictions on receiving compensation for services rendered anyone before a federal agency (18 U.S.C. 203); self-dealings with private foundations (26 U.S.C. 4941, 4946); Members contracting with or sharing in the benefits of a government contract (18 U.S.C. 431); and some areas in the practice of law (note 18 U.S.C. 204).

Most rank-and-file employees of the executive branch currently have no specific limitation on the amount of income that they may earn on the outside. Certain high-level presidential appointees who are appointed to a full-time, noncareer position, are now restricted by a recent presidential Executive Order (EO 12674, April 12, 1989) from receiving any earned income from outside employment or activities during the time of their appointment. Before this presidential order, appointees of the President who required Senate confirmation, and who earned at the GS–16 salary level and above, were restricted by the Ethics in Government Act to earning 15 percent of their official salary on the outside.

ISSUES

The controversy over outside earned income focuses primarily on honoraria fees accepted by Members of Congress. In 1987, Members of the House and Senate received a combined total of $9.8 million in honoraria, including $3 million donated to charity. Significant increases in honoraria income in recent years has heightened the public perception that honoraria is a way for special interests to try to gain influence or buy access to Members of Congress, particularly since interest groups most often give honoraria to Members who serve on committees which have jurisdiction over their legislative interests.

As early as 1976, the Commission on Executive, Legislative, and Judicial Salaries reported inadequate salaries for Members and officials of the three branches of government, and recommended salary increases together with certain ethics reforms, including limitations on honoraria and other outside earned income. Partly because of the continual rejection of recommended salary increases from the pay commissions and the ensuing compensation dilemma in the government, Members have turned increasingly to earning

honoraria as a supplement to their official salaries. There is growing concern that the practice of acceptance of honoraria by Members, particularly from interest groups with important stakes in legislation, creates serious conflict of interest problems and threatens to undermine the institutional integrity of Congress.

Concern also exists regarding the tax advantages that accrue to Members who receive substantial honoraria income in excess of the annual limitation and donate the excess to charity. First, Members may hold their excess honoraria until the end of the year and keep any interest earned on it. Second, Members may set up tax-sheltered retirement funds, such as Keogh Accounts available to the self-employed, and contribute up to 25 percent of their total honoraria earnings as self-employment income. This gives Members an incentive to earn more in honoraria, including amounts donated to charity, in order to increase their tax-sheltered contributions to a pension plan, or to increase interest income.

There is also concern that receipt of legal fees and other compensation for professional services, and directors' fees from serving on boards of corporations, associations, nonprofit organizations, and other entities, creates at least the appearance of impropriety and the potential for conflicts of interest. Based on the fundamental principle that a public office is a public trust, all officials of the government are expected to act in the interests of the beneficiaries of that trust, that is, the general public.

When certain private positions and employment create for the Member or public official a fiduciary or a representational responsibility to a private client or a limited number of private parties, then such outside activities create the potential for a serious conflict of interest. The conflict occurs in the clash of those responsibilities and the divergence of public and private interests on a particular governmental matter or in general government policy.

There is a potential for abuse of this type of income in cases where outside interests attempt to trade on the prestige of Members of Congress, or use such fees to channel income to Members if honoraria income is banned.

RECOMMENDATIONS

Honoraria

The task force recommends that honoraria be abolished for all officers and employees of the government, except the Senate, beginning in 1991. In 1990, honoraria would be limited to the amount permitted in 1989—30 percent of the 1989 salary level, or $26,850. The term "honorarium" means the payment of money or any thing of value for an appearance, speech, or article by a Member, officer, or employee. The limit on all outside earned income in 1990 would be frozen at the 1989 level. It would not increase as a result of a higher salary rate in 1990.

The task force intends that the prohibition on honoraria for speeches, articles, and appearances extends to payment or compensation for such activity in any form. The ban on honoraria could not be circumvented, for example, by arranging for a continuing series of talks, lectures, speeches, or appearances and re-characterizing the income as a "stipend" or "salary."

Donations of honoraria to charity would continue to be permitted after honoraria is abolished in 1991, but with certain restrictions and protections against potential abuse. Any honorarium that could have been received but for these provisions of law may be donated instead directly by the payor to a charitable organization (as defined in section 170c of the Internal Revenue Code of 1986), and no tax consequence or benefits to the Member or official may be derived from such payments to charity. The bill would amend the tax code to provide that a payment in lieu of honoraria made to a charity would not be deemed to be income received by the Member or employee. Thus, the amount of honoraria donations to charity could not be used to inflate the amount of tax-sheltered contributions made to a Keogh Plan or other pension fund.

A payment in lieu of honoraria to a charitable organization may not exceed $2,000, nor may it be directed to a charity from which the Member, officer, or employee, or anyone in his or her immediate family, derives a financial benefit. The task force intends that a financial benefit for purposes of this rule would be a direct benefit to the individual or a family member that is separate from any general benefit that the institution would derive. For example, this provision would not prohibit a payment to a university at which the Member's child is a student, or to a health care facility at which a family member is a patient.

Outside Earned Income

In addition to banning honoraria after 1991 for all officers and employees of the government, the task force recommends a limitation on all other outside earned income equal to 15 percent of the salary set for Executive Level II, beginning in 1991. The limitation would apply to all officers and employees paid at the GS–16 salary level and above (currently $67,000).

The outside earned income rule would be administered by and subject to the rules and regulations of the House ethics committee; the Office of Government Ethics and designated agency ethics officials for the executive branch; and the Judicial Conference of the United States for the judicial branch. The existing interpretations of the ethics committee on the application of the House Rule to outside earned income is not changed in any way by the task force proposals.

Outside Employment

The task force recommends other rules and restrictions on outside employment activities for Members, officers, and noncareer employees in all three branches of the government (except the Senate), compensated at the GS–16 salary rate and above. These provisions include (1) affiliating with or being employed by a firm, partnership, or other entity for compensation to provide professional services which involve a fiduciary relationship; (2) permitting one's name to be used in a firm, partnership, or other entity; (3) practicing a profession for compensation as an officer or on the board of an association, corporation, or other entity; and (5) teaching activities for compensation without prior notification and approval from the appropriate ethics office.

The task force notes that a "fiduciary" is generally described as one "having a duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking" (*Black's Law Dictionary*, 5th Ed. 563). However, the task force intends that the term fiduciary not be applied in a narrow, technical sense and wants to ensure that honoraria not reemerge in various kinds of professional fees from outside interests. The task force intends the ban to reach, for example, services such as legal, real estate, consulting and advising, insurance, medicine, architecture, or financial. The appropriate ethics office will make the determination as to which professional activities involve a "fiduciary" relationship.

The task force intends the ban on the use of names by firms, partnerships, and other entities to be interpreted and applied in a manner consistent with the rules presently governing lawyers who are appointed to a federal judgeship. Specifically, the task force understands that a law firm, real estate agency, or other firm that bears a "family" name, as opposed to the name of the individual Member, officer, or employee, would not have to change its name. Thus, the fact that a Member, officer or employee is presently associated with a law firm founded by, and still bearing the name of, his father would not require the firm to drop the "family" name.

The restriction on service as an officer or member of the board of any organization or other entity relates only to paid activities. Unpaid service on a board of directors is permitted. The prohibition on paid service extends only to directors' fees or other salary payments. It would not extend, for example, to receipt of travel expenses in connection with service on the board, or to an insurance policy as a member of the board.

The restrictions and limitations on outside earned income, honoraria, and employment made by the bill are conditional on the enactment and retention of the proposed salary increase for Members and high-ranking executive and judicial branch personnel.

3. Standards Committee Procedures

BACKGROUND

Under the Constitution, "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."

This internal authority to discipline and even expel Members for misconduct is one which Congress has historically been reluctant to use. Not only is it difficult for Members to sit in judgment of their peers, but there is a strong belief that such matters should be left for the courts and the people to decide.

Nevertheless, the House has recognized that the principal purpose of its disciplinary authority is not so much to punish an offending Member as it is to protect the institution. In 1873, a House select committee, in recommending the expulsion of two Members, echoed these views and observed that the continued presence of the two Members "tends to bring the body into contempt and disgrace." And it concluded that the power of expulsion "is a power of purgation and purification to be exercised for the public safety and . . . for the protection and character of the House."

The same is true of lesser forms of discipline: the House has a right and responsibility to protect the dignity and integrity of the institution if the people are to retain confidence in it.

Prior to the second half of this century, the House had no Code of Official Conduct and no standing committee to investigate misconduct. When investigations of misconduct were authorized, they were either assigned to a select committee or one of the standing committees. But, in 1967, mainly in response to the case of Rep. Adam Clayton Powell, Jr. (D-N.Y.), the House created the Committee on Standards of Official Conduct; and the following year it adopted the Code of Official Conduct and gave the committee authority to investigate alleged wrong-doing and report its findings and recommendations to the House.

CURRENT HOUSE RULE

Under House Rule X, the Committee on Standards of Official Conduct is required to be composed of an equal number of Members from the majority and minority parties (now 6 members each). It is given legislative jurisdiction over measures relating to the Code of Official Conduct.

The committee is also authorized to recommend to the House administrative actions to establish or enforce standards of official conduct, and to investigate alleged violations by Members, officers, or employees of any law, rule, regulation or standard of official conduct relating to their official duties. After notice and hearing relating to an investigation, the committee is authorized to recommend to the House, by resolution or otherwise, any action it considers appropriate in the case.

As a result of any evidence disclosed in the course of an investigation that a law relating to official duties has been violated, the committee is authorized, with the approval of the House, to report it to the appropriate Federal or State authorities.

The committee is also authorized to issue advisory opinions on request as to the propriety of any current or proposed activity, and to publish such opinions for the guidance of the House after deleting the name of the requesting individual to assure privacy.

The House rule requires a majority vote of the committee membership to undertake any investigation, to approve any resolution, report, recommendation or advisory opinion, and to make public the contents of any complaint or any information or testimony received.

The committee is authorized to undertake an investigation on its own initiative; on receipt of a sworn complaint from any Member; or on receipt of a sworn complaint from a non-Member who has been refused in writing by at least three Members to transmit the complaint to the committee.

Finally, House rule X provides that a committee member may not participate in any investigation into his own conduct, and may disqualify himself, with committee approval, from participating in the investigation of any individual if he stipulates in writing and under oath that he could not render an impartial and unbiased opinion. In both such instances, provision is made for the Speaker to designate another Member to serve for that investigation.

ISSUES

The Committee on Standards of Official Conduct has been variously criticized over the years as either being too lax or too zealous in its investigative and enforcement responsibilities. The criticism has emanated from a variety of sources, both inside and outside the Congress, depending on the times and the circumstances.

In reviewing the present operations of the ethics committee, both in public hearings and private interviews with Members, the task force has found generally that both public and congressional perceptions of the committee are favorable. It has proven under very difficult circumstances that its present operations and procedures are working and are effective.

Nevertheless, certain issues have been raised in the course of the task force review that deserve to be addressed. Most of the issues raised are not so much a reflection on the performance of the current committee as they are on the perceived structural deficiencies of the system that has existed since the creation of the committee.

The most commonly heard complaint about the process is that the same persons who conduct the investigation are also in charge of deciding guilt and recommending sanctions to the House. Under the current system, the full committee decides on: (a) whether to undertake an investigation; (b) whether to issue a "Statement of Alleged Violations" on grounds that it has reason to believe a violation has occurred; (c) whether there is clear and convincing proof that a violation occurred; and (d) what recommendation, if any, to make to the House.

Growing concern has been voiced by Members over the filing of "frivolous" complaints for political purposes. It has been pointed out that some campaign organizations even recommend such a tactic to put an opponent on the defensive.

A related complaint levelled at the process is that once a statement of alleged violations has been made public, the accused Member is presumed by the press and public to have been found guilty. A person's personal character and professional reputation may never recover from the media attention given to a preliminary finding that a violation may have occurred, even if the Member is later exonerated.

Other concerns relating to the due process rights of the accused include the fact that an accused Member is denied the basic right to counsel while defending himself on the House floor and that there seem to be inconsistent penalties imposed for similar offenses.

Many Members have also urged a statute of limitations on alleged violations. A Democratic Caucus Task Force in 1980 recommended a 5-year statute of limitations on ethics committee investigations.

One of the most frequently expressed frustrations of Members is the conflicting advice they receive on what is and is not acceptable conduct. More often than not the fault is not with the ethics committee, but the tendency of Members to seek advice elsewhere for fear of being investigated if they ask the ethics committee directly.

RECOMMENDATIONS

The task force finds that, for the most part, existing ethics committee rules contain sufficient safeguards to protect Members against frivolous complaints and procedural unfairness. Indeed, the task force would recommend against attempting to duplicate the judicial system in every respect since this would only prolong proceedings and detract from the basic purpose of an internal disciplinary process. That purpose is to deal fairly yet expeditously with wrong-doing to restore the integrity of and public confidence in the institution.

While the task force considered proposals for an independent investigative office or special prosecutor for the Congress, it rejected these on grounds that such mechanisms ignore the basic responsibility of the Congress under the Constitution to discipline its own Members for disorderly behavior.

Bifurcation of the Ethics Committee.—The task force recommends that the investigative and adjudicative functions be divided within the ethics committee into two sets of subcommittees—the so-called bifurcation approach. While the task force considered drawing on Members by lot from outside the ethics committee to conduct each investigation, it ultimately rejected this approach because of numerous practical problems. These included finding Members who would be willing and able to serve, questions involving the consistency of opinions and rulings, and additional delays in constituting new subcommittees, and familiarizing them with committee procedures.

Under the task force proposal, the committee would be enlarged from 12 to 14 members, and a three-term limit would be imposed on membership for any five consecutive Congresses. Whenever the committee votes to undertake an investigation, a subcommittee on investigation consisting of 4 or 6 members would be appointed to conduct the investigation (with equal representation from the majority and minority parties). The senior members from each party would serve as chairman and ranking minority member. The chairman and ranking minority member of the full committee could only serve as non-voting, ex-officio members of an investigative subcommittee.

If the investigative subcommittee issues a Statement of Alleged Violations, the statement could not be released to the public until the accused has been afforded an opportunity to respond. Both the statement and response, if any, would be released simultaneously, either at the first public meeting or hearing on the case, or, if there is no such public session, as part of the final report to the House on the matter.

A subcommittee on adjudication, consisting of the remaining members of the full committee, would then be constituted to hear the evidence and determine guilt. A majority of the subcommittee membership plus one must be present at all times for any hearing or the conduct of any business. The task force considered, but rejected as impractical, a requirement that all subcommittee members be present at all times.

The findings of the adjudicatory subcommittee would be reported to the full committee which would then decide what recommendations or sanctions, if any, to submit to the House in its final report.

Under the task force proposal, a committee report to the House would be required for any case the committee has voted to investigate, no matter what the final disposition of the case. This is designed to ensure full accountability to the House which has ultimate authority over disciplinary matters under the Constitution. It is also designed to assure the public that the House has conscientiously carried out its responsibility to investigate official misconduct.

The task force further recommends that any letter of reproval or other administrative action of the committee in connection with an investigation may only be issued or made as a part of its final report to the House. There should be no question that the committee has any authority to unilaterally impose administrative remedies without simultaneous House awareness of the action. The task force would note that this is the practice that has been followed by the ethics committee in recent times, and commends it on adhering to its obligation under rule X to recommend to the House any enforcement actions of an administrative nature.

If the committee includes in its report to the House a letter of reproval, and recommends that no further action be taken by the House, then the act of filing the report shall be deemed to be acceptance by the House of the recommended administrative action. Obviously the House may always consider additional sanctions as a constitutionally privileged matter, just as a Member could appeal an administrative sanction with which he disagreed.

Nothing in this procedure should be considered a grant of authority to the committee to impose fines as an administrative action not requiring approval by the House. The committee already recognizes under its own rules that fines are one of several sanctions that require House action.

Statute of Limitations.—The task force recommends that the ethics committee not be permitted to initiate or undertake an investigation of an alleged violation which occurred prior to the third previous Congress unless the alleged violations occurring prior to that are directly related to, and constitute a continuous course of conduct in conjunction with more recent actions.

This limitation does not purport to inhibit the constitutional authority of the House to discipline and, when appropriate, expel a Member of the House. In any instance it would still be within the prerogative of the House to instruct, by the adoption of a resolution, the Committee on Standards of Official Conduct to conduct an investigation with respect to any matter, notwithstanding this provision.

Right to Counsel.—The task force recommends that an accused Member be permitted to be accompanied by counsel on the House floor when the recommendation of the ethics committee on his case is under consideration by the House. It should be made clear that this change in House rules to give counsel floor privileges in no way authorizes a counsel to address the House at any time. Nor

does this recommendation in any way affect the right of an accused Member to have another Member speak in his defense.

Advice and Education.—The task force strongly feels that more initiatives can and should be taken by both Members and the ethics committee to achieve a greater understanding of and compliance with House rules and those laws affecting official conduct. This is not offered in criticism of the current committee. It is more a reflection on the reluctance of Members to utilize its offices for advice and to better educate themselves and their staffs on acceptable conduct.

In order to promote a greater outreach effort from both the committee and Members and staff, the task force recommends that an Office of Advice and Education be created within the ethics committee for the sole purpose of handling inquiries and organizing seminars, workshops and briefings for the benefit of the House.

It is not the intention of the task force that such an office be an autonomous entity, for that would defeat its purpose of providing reliable information from the committee.

Instead, the office would be headed by a director appointed by the chairman, in consultation with the ranking minority member. It would be comprised of such staff as the chairman determines is necessary. However, the task force strongly recommends that the staff of the ethics committee be enlarged to properly carry-out the responsibilities of the new office, as well as to provide adequate staff support to the various investigative subcommittees which may be operating simultaneously under the task force proposal.

In addition to conducting ethics seminars and briefings for House Members, spouses and staff, the office would assist the chairman and committee in developing written responses to inquiries as well as formal advisory opinions of general applicability.

The task force specifically recommends that no information provided by the committee to a Member, officer or employee regarding prospective conduct could be used as the basis for initiating an investigation if the requesting individual acts in accordance with the written advice of the committee. This is for the purpose of encouraging greater utilization of the ethics committee for more accurate and reliable advice.

The task force feels that a more active educational effort on ethics matters can be the greatest deterrent to inadvertent misconduct in the future. There should no longer be any excuse of ignorance of the rules. Members will have greater opportunities to learn them and a more positive obligation to observe them.

4. Financial Disclosure

BACKGROUND

The principal objectives of financial disclosure are to inform the public about the financial interests of government officials in order to deter potential conflicts of interest and to increase public confidence in the integrity of government officials. Public disclosure of the financial interests and outside business activities of Members of Congress enables their constituents to monitor any potential conflicts of interest and to evaluate their performance of official duties in light of those private interests and activities.

The problem of conflicts of interest involves complex and difficult issues, especially with respect to the legislative branch. A conflict of interest is generally defined as a situation in which an official's private financial interests conflict or appear to conflict with the public interest. Some conflicts of interest are inherent in a representative system of government, and are not in themselves necessarily improper or unethical. Members of Congress frequently maintain economic interests that merge or correspond with the interests of their constituents. This community of interests is in the nature of representative government, and is therefore inevitable and unavoidable.

At the other extreme, a conflict of interest becomes corruption when an official uses his position of influence to enhance his personal financial interests. Between these extremes are those ambiguous circumstances which may create a real or potential conflict of interest. The problem is identifying those instances in which an official allows his personal economic interests to impair his independence of judgment in the conduct of his public duties.

The task force believes, in light of the ten year history of the disclosure law under the Ethics in Government Act, that public financial disclosure, coupled with the discipline of the electoral process, remains the best safeguard and the most appropriate method to deter and monitor potential conflicts of interest in the legislative branch.

The original financial disclosure rule in the House of Representatives, adopted in 1968, was perceived as inadequate to accomplish the objectives of disclosure because it did not provide the public with all the relevant information needed to assess potential conflicts of interest. The data publicly disclosed provided only minimal information on a Member's financial affairs, and public access to the disclosure statements was limited.

The disclosure requirements recommended by the Obey Commission and enacted into law by the Select Committee on Ethics of the 96th Congress expanded upon the information required by the House rule and increased public access to the disclosure reports. The financial disclosure provisions in the Ethics Act were grounded on two basic principles: (1) disclosure should be required only for those items which are relevant to potential conflicts of interest; and (2) reporting requirements should be designed to avoid unnecessary invasions of privacy or excessively burdensome record-keeping requirements.

The task force believes that the financial disclosure law as it now applies to all three branches of government effectively balances the privacy rights of the reporting individual with the governmental interests in informing the public and deterring conflicts of interest.

CURRENT HOUSE RULE AND STATUTE

House Rule XLIV incorporates by reference the Legislative Branch Financial Disclosure requirements in Title I of the Ethics in Government Act (2 U.S.C. 701) as a rule of the House. The disclosure law requires Members, officers, and employees compensated at the GS–16 salary rate or above to report the following financial information for the preceding calendar year:

Income.—(A) The source, type, and amount of income, and the source, date, and amount of honoraria, aggregating $100 or more from any source; (B) the source, type, and category of value of income from dividends, interest, rent, and capital gains aggregating $100 or more from any source.

Categories of value for reporting income from dividends, interest, rent, and capital gains are: (1) less than $1,000; (2) between $1,000 and $2,500; (3) between $2,500 and $5,000; (4) between $5,000 and $15,000; (5) between $15,000 and $50,000; (6) between $50,000 and $100,000; and (7) greater than $100,000.

Gifts.—(A) The source and a brief description of gifts of transportation, lodging, food, or entertainment aggregating $250 or more from any source; (B) the source, a brief description, and value of all other gifts aggregating $100 or more in value from any source. Exempted are gifts from relatives, gifts of personal hospitality of an individual, and gifts valued at $35 or less.

Reimbursements.—The source and a brief description of reimbursements aggregating $250 or more in value from any source.

Assets.—The identity and category of value of any interest in property held during the year in a trade or business, or for investment or the production of income, which has a value which exceeds $1,000 as of the close of the calendar year.

Liabilities.—The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $10,000 at any time during the calendar year. Mortgages on a personal residence are exempted.

Transactions.—A brief description, date, and category of value of any purchase, sale, or exchange during the calendar year which exceeds $1,000 in real property (other than a personal residence), or in securities or commodity futures.

Categories of value for reporting assets, liabilities, and transactions are: (A) less than $5,000; (B) between $5,000 and $15,000; (C) between $15,000 and $50,000; (D) between $50,000 and $100,000; (E) between $100,000 and $250,000; and (F) greater than $250,000.

Members, officers, and employees are also required to report any positions held as an officer, director, trustee, partner, employee or consultant of any business entity, nonprofit organization, labor organization, or educational institution; and the terms of any agreement with respect to future employment or continuation of payments or benefits by a former employer.

ISSUES

The dollar amounts established in the 1978 disclosure law have not been increased in 11 years. Both the minimum threshold figures for reporting some information and the exceptions from reporting may now be too low. Similarly, the upper limits on the categories of value for reporting assets, liabilities and transactions (over $250,000) are too low to give as full a disclosure of financial interests as when the law was first enacted.

There is also concern that the specific categories for reporting financial interests are unduly narrow and result in a needless burden on filers without providing any more relevant information.

The narrow categories of value also increase the risk that filers will make inadvertent mistakes.

Neither the House or Senate require Members and employees to file termination reports after they leave their positions. The executive and judicial branches require such reports to be filed within 30 days after an official leaves government service. The lack of termination reports in the legislative branch leaves substantial gaps of as much as a year or more in the reporting of financial information for the period immediately prior to leaving office. As such, the objectives of the disclosure system and the effective enforcement of ethics rules and regulations is undermined.

The House and Senate ethics committee are required to review financial disclosure reports to determine whether they are filed on time, are complete, and in proper form. A General Accounting Office report on the legislative branch financial disclosure systems, issued September 8, 1989 (GAO/GGD-89-103), concluded that the House and Senate have substantially improved their systems, but recommended that compliance review and follow-up procedures be strengthened.

The task force is also aware of concerns expressed by Members and staff that the House disclosure forms are unclear and difficult to use, and that the separate instructions booklet is overly complicated.

RECOMMENDATIONS

The task force recommends a number of amendments to the financial disclosure law to update and strengthen the reporting requirements for all three branches of government, and to improve compliance review procedures.

The recommendations follow:

Contents of Report

Income.—The bill increases the disclosure threshold for reporting income to $200 from any source.

Honoraria.—The task force recommends that a new reporting procedure be established with respect to honoraria payments to charity beginning in 1991, when it is proposed that honoraria be abolished. The financial disclosure statement for calendar year 1991 would report the source, date and amount of any payment in lieu of honoraria made on behalf of a Member, officer, or employee to charitable organization.

In addition, a corresponding list of the date, amount, and recipient of any such payments would be filed under seal with the Committee on Standards of Official Conduct. That information would remain sealed unless the committee, pursuant to its investigative authority, determines that the examination of such information is essential in an official investigation by the committee. The Committee may make public any portion of the information unsealed in any report it may file with respect to an investigation of the individual.

This procedure would serve as an enforcement mechanism to ensure compliance with the proposed restrictions on payments in lieu of honoraria made on behalf of a Member or employee to a

charitable organization, (see section 2). The current reporting requirements for honoraria (source, date, and amount) would remain in effect for calendar year 1990.

In addition, the task force recommends that the source, date and amount of any honoraria earned by the spouse be reported. Current law requires the source, but not the amount, of any earned income of the spouse over $1,000 from any person. The bill treats honoraria income of the spouse separately and requires the source, date and amount of any honoraria, regardless of amount.

Gifts.—The bill collapses the two disclosure categories into one, and changes the reporting threshold to $200. In order to conform disclosure of gifts with appropriate agency rules on acceptance of gifts, the bill provides that any gift which does not exceed the nominal value as defined by the rules of the House or Senate (or of the Office of Government Ethics or the Judicial Conference in the case of the executive and judicial branches) need not be aggregated.

The effect of this change, in the case of the House, would be to exempt from the disclosure requirements any gifts that are not aggregated for purposes of the prohibitions on acceptance of gifts under clause 4 of rule XLIII.

The task force also intends that anyone who seeks a waiver from the House gifts rule would also be entitled to request a waiver from the disclosure requirements. Under current law, the appropriate supervising ethics office may grant a "publicly available request" for a waiver from the gifts reporting requirements. According to executive branch regulations, such a waiver is generally based on a determination that the relationship between the individual and the donor and the motivation for the gift are purely personal, and that there is no contervailing public purpose requiring disclosure of the nature, source and value of the gift. The waiver request, identifying the donor and the circumstances justifying a waiver, and the grant of the waiver are made publicly available in the same manner as the disclosure report.

The task force urges the Committee on Standards to adopt similar procedures for the grant of a waiver from the gifts reporting requirements.

Reimbursements.—The bill lowers the disclosure threshold to $200 to provide uniformity with other rules and reporting requirements. The bill also requires more detailed reporting of travel expenses by including a travel itinerary and the dates, in addition to the nature of the expenses provided. The current reporting instructions require a brief description of the itinerary and the nature of the expenses provided when disclosing travel expenses paid or reimbursed by a private source in connection with speaking engagements and similar events. The task force recommends that the statute be amended to specifically require that information together with the dates of the travel.

The only substantive change in terms of the information reported is the inclusion of dates of travel. For example, the sample reporting form prepared by the Committee on Standards of Official Conduct shows the following reimbursement item: *"Source:* ABC Trade Association; *Brief Description:* Roundtrip airfare, Washington, D.C. to Chicago, 2 days lodging." Under the proposed amendment, the only change in that example would be to include the

dates of the reimbursement. An example of a description in the case of foreign travel with several stops on the itinerary might be as follows: "August 8–16, New York to Paris to Geneva to Washington, D.C., 8 days food and lodging, self and spouse."

It is important to include the dates on which travel expenses were incurred because of the proposed limit on the duration of any travel reimbursement that may be accepted in connection with privately-funded speaking engagements or other events. Enforcement of that limitation through the financial disclosure law will help to ensure full compliance and will demonstrate to the public that the House intends to enforce the new restrictions.

Assets.—The bill authorizes the House and Senate ethics committees to exempt from reporting the financial interests held by a regulated investment company or a pension plan or other deferred compensation plan. The intent of this provision is to clarify that the underlying assets of a mutual fund whose portfolio is available in standard reference manuals, or a widely-diversified pension plan that is managed independently of the reporting individual, need not be reported. The provision allows the committee to limit disclosure of the interests held within pension plans or mutual funds, while retaining the reporting of the individual's interests in such funds.

The task force has made no change in the current exemption from disclosure for a personal residence, either as a property holding, transaction or a liability in the case of a mortgage. However, the reporting instructions currently require that if any part of a personal residence produces rental income, it is deemed to be property held for the production of income and therefore its total value is reported as an asset and the mortgage as a liability. The task force believes that in the case of a personal residence, only the pro rata value of that part of the residence that produces rental income should be disclosed, rather than the full value of the residence, and the total value of the mortgage should be reduced by a proportionate amount. The committee is urged to change the reporting instructions accordingly. The privacy rights of the individual that underlie the exemption for reporting a personal residence should not be disregarded simply because some part of the residence is rented.

Qualified Blind Trusts. The bill reinforces the independence of the trustee of a qualified blind trust, by requiring that the trustee must be a financial institution, a law firm, a brokerage firm, a certified public accounting firm, or an investment firm, and not an individual or any entity owned entirely by one individual. It also requires that the category of value of the total assets of a blind trust must be reported, in addition to income from the trust as required under current law.

Liabilities.—The bill narrows the exemption for reporting liabilities owned to a relative to apply only to liabilities owed to the spouse, parent, grandparent, brother, sister or child of the reporting individual or of his spouse. Current law exempts loans from any relative as that term is defined in the Act. The definition, principally for purposes of exempting disclosure of gifts from relatives, includes first cousins, aunts and uncles, step children, grandchildren and other relatives beyond the immediately family. The task

force believes that the current exemption for loans owed to relatives is overly broad and that the omission of such information could conceal an individual's potential conflict of interest with a relative who may have significant financial interests in government decisions.

Termination Reports

The task force recommends that Members and employees of the legislative branch be required to file termination reports within 30 days after leaving office, or by May 15, whichever is later. The report would cover the preceding calendar year, if no report for that year has been filed, and the period up to the date the individual leaves office. Current law authorizes the House and Senate ethics committees to require such termination reports by rule, but neither has done so. Without such a requirement, there is a substantial gap in the reporting of financial information for legislative branch personnel that could disclose conflicts of interest, and use of the disclosure law as an enforcement tool for restrictions on gifts and outside earned income is negated.

Coverage of Candidates

The definition of a candidate for purposes of the disclosure law should conform to the definition in the Federal Election Campaign Act. Current law defines candidates to include any person who has qualified for the ballot for nomination or election to the Congress, and any person who has registered with the Federal Election Commission. A candidate must file with the FEC if he or his principal campaign committee has either spent or raised $5,000 or more. On the other hand, a person may qualify for the ballot in some states simply by paying a nominal fee. According to a 1989 report by the General Accounting Office, there is widespread noncompliance with the disclosure requirements by many of those minor candidates who qualify for the ballot but do not wage a serious campaign.

The task force determined that the financial disclosure requirements should only apply to those candidates who are subject to the requirements of the Federal Election Campaign Act. Candidates who do not meet the requirements for registering with the FEC are unlikely to mount a serious campaign and there is no public interest in requiring financial disclosure statements by such minor candidates. Accordingly, the task force recommends that the definition of candidate for purposes of financial disclosure be the same as the definition for purposes of federal election law.

Public Availability

The time within which reports must be made available to the public should be extended from 15 days to 30 days after they are filed. This extension is intended to allow additional time for the House and Senate ethics committees to review the reports filed by Members and identify any inadvertent errors or apparent omissions. The Member would then have an opportunity to file a correction which would be made available to the public at the same time as the original report.

The task force also recommends that the deadline by which the Clerk of the House must publish all reports filed by Members as a public document be extended from July 1 to August 1. As amended, Rule XLIV, clause 1 would require the Clerk to publish by August 1 of each year reports filed between January 1 and June 15. The extension corresponds with the delay in the time the reports must be made pubicly available and will ensure that the Clerk has sufficient time to publish reports that have been reviewed and, if necessary, corrected by the reporting individual.

Compliance Review

The task force proposal directs the Committee on Standards of Official Conduct to adopt procedures to ensure that disclosure reports are reviewed with 60 days after they are filed. The task force appreciates the additional workload that this would impose on the committee, but notes that personnel from the General Accounting Office are usually detailed to the committee to assist in its review of disclosure reports.

The task force also suggests that the committee, in its review of reports, adopt procedures to ascertain whether the reporting individual is in compliance with applicable laws and regulations, and in the event it determines that the individual is not in compliance, to provide advice on what steps should be taken to ensure compliance.

The September, 1989 GAO report found that the committee did not follow up to ensure that requested amendments were received and that amendments corrected the errors identified. The task force notes the committee's position that, after the filers are presented with the apparent need for correction or explanation, it is the filers, not the committee staff, who are responsible for ensuring that correct reports are submitted. However, the task force agrees with the GAO's comments that the lack of follow-up to obtain amendments and to ensure that corrections have been made properly allows some reports to go uncorrected and thus defeats the purpose of the review program. Accordingly, the task force urges the committee to establish procedures to ensure that disclosure statements are corrected as requested.

Enforcement

The maximum civil penalty for violation of the disclosure law is increased from $5,000 to $10,000. Other civil fines under the law, for violation of the blind trust requirements and for unlawful use of the information obtained from disclosure statements, are also doubled.

A new late filing penalty of $200 is established for anyone who files a report later than 30 days after the original due date or any extension of the due date. The task force notes that the law authorizes reasonable extensions of time up to 90 days beyond the due date, yet there continues to be a problem with individuals who do not file by the due date and fail to respond on a timely basis to repeated reminders that their report is overdue. There is no penalty of any kind for late filing. The imposition of a $200 fine should serve as further inducement for those who fail to file on the due date. The task force intends that the committee would determine,

based on the relevant circumstances, at what point civil penalties for willful failure to file would apply in the case of a report that has not been filed.

The task force also recommends that the civil sanction for knowing and willful falsification or failure to file a disclosure statement should be the sole and exclusive penalty for any violation of the statute. The legislative history of the Ethics in Government Act of 1978 demonstrates that Congress intended that no criminal penalties should apply to violations of the law. The original House bill as introduced (H.R. 7401) and the bill passed by the Senate (S. 555) both included criminal penalties for violations of the disclosure law. The compromise bill approved by the House (H.R. 13850) specifically provided for civil penalties for "knowing and willful violations" and deliberately deleted criminal sanctions altogether. The conference committee adopted the House position on penalties, thereby dropping entirely the criminal sanctions included in the Senate version. In addition, statements made during Floor debate by the bill's managers and others conveyed the unmistakable meaning that all criminal penalties were eliminated in order to accomplish passage of the bill.

Thus, it is clear that Congress did not intend a general criminal fraud statute, such as the False Claims Act under 18 U.S.C. 1001, to apply to reporting violations under the Ethics in Government Act. The False Claims Act imposes criminal sanctions for knowing and willful falsification or concealment of a material fact, or the making of any false, fictitious or fraudulent statement or document, on any matter within the jurisdiction of the United States government. However, a 1985 decision of the United States Court of Appeals for the District of Columbia Circuit held that 18 U.S.C. 1001 applies to the intentional falsification of financial disclosure reports. *United States* v. *Hansen,* 771 F.2d 940 (D.C. Cir. 1985). The court concluded that the legislative history was contradictory and did not provide the necessary "clear and manifest" intent on the part of Congress to preclude the otherwise clear application of section 1001 by its terms to false submissions under the Ethics Act.

The task force notes that the Department of Justice has indicated that Department policy is to bring prosecutions under section 1001 only in aggravated cases where it is satisfied that the false statements were deliberately designed to conceal improper or illegal conduct and thus can be shown beyond a reasonable doubt to have been made knowingly and willfully. Accordingly, the task force decided against recommending an amendment to the Ethics Act to explicity provide that the civil penalties would be the exclusive sanction for violations of the Act. In doing so, it expects that the Department will decline criminal prosecution under section 1001 for any but the most egregious cases were falsification of reports can be shown to have been designed to conceal illegal acts.

Disclosure Forms

The task force recommends that the Committee on Standards of Official Conduct, which is assigned responsibility under the Act for developing reporting forms, adopt the basic design and format of the Senate disclosure forms, with certain modifications. The Senate disclosure forms and reporting instructions, which are comparable

to those used by the executive branch, are more readily understood and easier to use than the House forms, and more comprehensible to the public.

The Senate disclosure reports have separate pages for each category of required information, and provide at least 15 lines for the reporting of individual items. In contrast, the House forms provide very little space for the reporting of financial interests, and rely on the use of continuation sheets if needed by the filer. The Senate forms also combine assets and income on the same page, with clearly labeled columns to check off the appropriate category of value, type of income, whether it was bought or sold during the year, and other required information. Instructions and examples are printed on the same page, and detailed reporting instructions are attached to the form.

The task force also recommends, as an improvement on the Senate form, that the reporting of honoraria and reimbursements for travel expenses from the same source be juxtaposed in some way to clearly identify those reimbursements that are in connection with a speaking engagement or other honoraria event. Also, for the benefit of the press and the public, the task force believes it would be helpful to include a statement on the front page of the form explaining the purpose of financial disclosure and emphasizing that the report is not intended to be a net worth statement.

The task force believes that redesigned disclosure forms modeled on the Senate reports will ease the reporting burden for Members and employees, will help to reduce inadvertent mistakes, and will facilitate the public's understanding and use of the financial disclosure statements.

5. Use of Official Resources

I. Rights and Duties of Staff

Current House Rules

There are a variety of House rules which affect the rights and duties of staff. Six of the 11 clauses of the Code of Official Conduct apply uniformly to Members, officers and employees of the House, including prohibitions against being paid by any source for exerting improper influence, against the acceptance of certain gifts, and against accepting honoraria in excess of the customary amount.

Clause 8 of the Code of Official Conduct prohibits Members from using their clerk hire allowance to pay someone for work which is not commensurate with their services. And clause 9 prohibits Members, officers or employees from discharging or refusing to hire someone, or otherwise discriminating against them with respect to compensation, terms, conditions or privileges of employment, on the basis of race, color, religion, sex, age or national origin.

House rule XI, clause 6, contains similar anti-discrimination provisions relating to the appointment of professional and clerical committee staff: they are to be appointed without regard to race, creed, sex, or age.

The Fair Employment Practices Resolution, adopted as H. Res. 558 in the 100th Congress, and readopted as H. Res. 15 in the 101st Congress, requires that House personnel actions shall be made free

from discrimination based on race, color, national origin, religion, sex (including marital or parental status), handicap, or age. The resolution also establishes a grievance procedure for consideration of alleged violations.

House rule XI, clause 6, prohibits professional committee staff from engaging in any work other than committee business, and from being assigned any duties other than those pertaining to committee business.

Rule XI, clause 2, imposes certain requirements on committee members and employees with respect to the use of committee funds for travel.

House rule XLI prohibits any officer or employee of the House from prosecuting or being interested in any claim against the government (other than as an original claimant).

Finally, rule XLIV, which incorporates Title I of the Ethics in Government Act relating to financial disclosure, requires staff members paid at the GS–16 level and above to file annual financial disclosure statements.

ISSUES

The fair and nondiscriminatory treatment of House staff is a matter of ongoing concern. While there is no evidence that major abuses of staff are occurring on a widespread basis, the isolated incidents which do come to light reflect poorly on the entire House.

The task force has received no evidence that the new Office of Fair Employment Practices is not working as intended, though it is barely a year old, and many employees may be unaware of its mediation, counseling and complaint review services.

Another issue which arises from time to time is the so-called "ghost employee" problem—staff who do not keep regular office hours in a congressional or committee office or who are being compensated for work they do not perform.

Concern has also been raised about potential financial conflicts of interest which may affect employees contacts with Federal agencies.

Finally, it has been pointed out that House staff are not subject to the same outside earned income and honoraria limits as Members, and yet are often in a position to command large speaking fees from groups with which they deal legislatively.

RECOMMENDATIONS

The task force recommends that House rules and the law be changed to prohibit any employee from receiving honoraria after 1990. The task force also recommends, by rule and by law, that senior staff, those paid at the GS–16 salary rate or above, be subject to the same 15 percent outside earned income limit and other employment restrictions that will apply to Members beginning in 1991. The details of these proposals are discussed in another section.

The task force recommends that the Code of Official Conduct, Rule XLIII of the Rules of the House, be amended to add a new clause 12 which provides guidance and direction to senior House employees with respect to potential or apparent conflicts of inter-

est. Under the new restriction senior staff, those required to file financial disclosure statements, are instructed to refrain from participating, in a personal and substantial manner and in their official capacity, in any contacts with agencies of the executive and judicial branches with respect to non-legislative matters which affect any business in which the employee has a significant financial interest.

The new provision recognizes that Members may not have alternative staff resources to utilize in making these important and appropriate communications on behalf of their constituents. Therefore, the rule provides, in subsection (b) that a Member can "waive" the restriction of this provision by executing a written waiver after having been advised, by the employee, of the employee's financial interest. Copies of all such waivers must be submitted to the Committee on Standards of Official Conduct.

The Committee will provide interpretive guidance to the Members and employees of the House. This guidance will include providing appropriate definitions for the various terms, such as "significant financial interest" and "participating personally and substantially" in line with its jurisdiction and responsibility to advise Members and employees of their obligations under the Code of Conduct and other provisions of the Rules of the House.

This new provision is intended to provide both a standard of conduct and a workable framework to guarantee that employees who engage in the proper and necessary congressional role of performing constituent service are not motivated by personal financial interests but are performing, at the direction of the Member, services motivated by the Member's representational duties.

The adoption, interpretation and enforcement of this restriction on the actions of House employees is an appropriate exercise of the House's constitutional authority and responsibility to regulate the conduct, and punish the misconduct, of those who work for the House.

Other than these major changes, the task force does not recommend any substantial amendments to House rules relating to the rights and duties of staff. It does expect, however, that the Committee on House Administration will conduct a thorough review of the new employee grievance procedure in the next Congress to determine whether it is working effectively, and, if not, what improvements should be made.

The task force has recommended some related technical amendments to House rules for the purpose of consolidating prohibited forms of discrimination found in rules XI and XLIII, and the Fair Employment Practices Resolution, under clause 9 of the Code of Official Conduct.

Under the proposed amendment, the clause would prohibit House Members, officers or employees from discharging, refusing to hire, or discriminating in conditions of employment against a person "because of such individual's race, color, religion, sex (*including marital or parental status*), *handicap,* age or national origin, *but may take into consideration the domicile or political affiliation of such individual.*"

The matters in italics are those which are incorporated from the Fair Employment Practices Resolution. It should be noted that this

change in the Code of Conduct in no way changes the rules which already apply to Members, officers and employees, since the Fair Employment Practices Resolution is already considered to have the same force and effect as a standing rule of the House.

The amendment has been made simply for the sake of convenience and uniformity. To the extent the additional matters are now included in the Code of Official Conduct, they are elevated in visibility and importance, even though they impose no new obligations on the House under it rules.

The task force also recommends amending clause 8 of rule XLIII in the Code of Official Conduct. That clause now prohibits Members from using their clerk hire allowance to pay someone who does not perform duties commensurate with the compensation he receives. Under the task force recommendation, the reference to clerk hire allowance would be stricken so that the rule would now apply to committee as well as personal staff, and it would be expanded to include employees of House officers as well.

Under the new language, a Member or officer could employ no one who does not perform official duties commensurate with his pay in the offices of his employing authority.

It should be noted that this rule in no way alters the current House Administration Committee regulation requiring monthly certification. It simply conforms the language of the Code of Conduct respecting a Member's responsibility for staff with the existing regulation. By placing this conforming language in the Code of Conduct, the task force is not proposing any new requirement, but rather is helping to ensure that Members are more fully aware of their obligations with respect to the staff personnel working for them.

The task force proposal includes an additional matter which is discretionary with committee chairmen. That change would authorize them to require that committee members who have direct supervisory authority over committee staff (e.g., subcommittee chairman and ranking minority members) affirm in writing to the chairman that the employees are in compliance with this provision.

The purpose of this requirement is to ensure accountability for employee performance. The rule specifically states that, if a supervising Member has affirmed in writing that the employee under his authority has met the criteria of the rule, this written affirmation is sufficient evidence that the chairman is in compliance with the rule's provisions. Any violation would consequently become the responsibility of the supervising Member.

One concern expressed about the existing certification requirement in the regulation, and the new rule's requirement that work be commensurate with compensation, is that Members may be vouching for work not actually performed if an employee is on authorized paid leave, either due to illness, maternity, or vacation.

It is not the purpose of this requirement, any more than it is of the present certification regulation, to require 52-weeks a year of work for an employee to be in compliance with the requirement. Authorized leave does not violate the work-commensurate-with-pay criterion.

However, to avoid questions of abuse, each office is advised to adopt a uniform leave policy applicable to all employees. It has

been suggested to the task force, and it concurs, that the Committee on House Administration might provide a model leave policy for the guidance of Member and committee offices. It would not be controlling but could be helpful to each office in devising its own uniform leave policy.

The task force has recommended amendments to House rules in two related areas. First, in clause 6 of rule XI, the requirement that professional committee staff "not engage in any work other than committee business," is amended by adding, "during congressional working hours." This is to conform the rule to the longstanding ethics committee interpretation that the rule does not prohibit such staff from outside employment on their own time.

Secondly, the task force recommends that rule XLI, which now prohibits House officers and employees from prosecuting or having an interest in any claim before the government, other than a personal claim, be amended by adding an exception for "the proper discharge of official duties."

This proposed change conforms with the parallel statute, 18 U.S.C. § 203, which prohibits government officials and employees from being compensated for performing government services, "except as provided by law for the proper discharge of official duties * * *."

The proposed change in House rules simply makes it clear that an employee would not be in violation of the rule for contacting government agencies on behalf of a constitutent of the Member for whom the employee works. Constituent service and casework are an integral part of every congressional office and in no way should be inhibited by a literal interpretation of the existing rule. The proposed amendment is designed to remove any question about the propriety of such contacts.

II. Use of Official and Campaign Funds

Current House Rules

House rule XLV prohibits Members from maintaining unofficial office accounts.

Federal law provides that funds generally may be used only for the purpose for which appropriated. Pursuant to this requirement, the *Regulations for Member Offices* issued by the Committee on House Administration states as a general rule that a Member's official expense allowance is provided to pay ordinary and necessary business expenses incurred in support of the Member's official and representational duties. The regulations specifically allow for automatic reimbursement for short-term and long-term leased automobiles that are "used exclusively in support of the conduct of official and representational business."

House rule XLIII, clause 6 requires that Members keep campaign funds separate from personal funds, and not convert campaign funds to personal use in excess of legitimate and verifiable prior campaign expenditures. Moreover, the rule prohibits Members from expending funds from their campaign account which are not attributable to bona fide campaign purposes.

ISSUES

The most common problem expressed to the task force by Members was the frequent dilemma of travelling in their districts on official or political business, and the impracticality of completely separating official, political and personal activities. The job of a congressman is, after all, it is argued, a matter of representing competing political interests: politics is integral to the business of government.

By the same token, even when a Member is travelling on strictly campaign business, matters relating to his official, representative duties are bound to arise.

And yet, Members generally use either an official or campaign leased or owned car during a particular day's travel in the district, depending on whether the day is to be devoted to official or campaign business. It is obviously impractical to take two cars and switch back and forth during the course of a day's events.

The incidental occurrence of other matters during a day's travel leaves Members understandably concerned about strict compliance with House rules and laws relating to the use of official and campaign funds.

RECOMMENDATIONS

The task force recommends the enactment of statutory language authorizing the incidental use of government owned and leased vehicles for other purposes, pursuant to the issuance of regulations by the appropriate agency. The Committee on House Administration is directed to amend its regulations to reflect this change with respect to officially used vehicles.

While the task force would not attempt to dictate the exact wording of such regulations, during its deliberations it considered language which made it clear that such incidental use should be during the course of and along the route of a day's official itinerary, incidental to the day's official business, *de minimis* in nature, frequency and time consumed, and otherwise not constitute a significant activity or event.

It should be clear from such suggested language that the task force in no way intends by this incidental use rule to authorize any significant commingling of activities, i.e., official, political and personal. For those Members who find such substantial commingling unavoidable, the task force strongly recommends that they enter into private leases or use personally owned vehicles and seek reimbursement from their official expense allowance or campaign funds as appropriate.

The task force is aware that this will involve new recordkeeping requirements for Members who are accustomed to the automatic prepayment system, but would hasten to point out that roughly one-third of the membership now uses such a system (while 40% use the long-term, automatic payment leases, and the remaining Members use short-term leases).

The task force does not propose changing the per mile reimbursement method to compensate for the official use of privately owned or leased vehicles. However, it is concerned that those Members

who use leased vehicles for mixed purposes may not be adquately compensated for their official use on a per-mile basis.

Therefore, the task force recommends that the Committee on House Administration conduct a thorough review of present travel reimbursement procedures and possible alternatives. Such a review should include consideration of a procedure whereby Members could seek *pro rata* reimbursement based on the daily itinerary rather than on mileage.

The task force understands that such a system is an option available in the Senate, and that it works successfully. Obviously documentation would still be required, but not in the same detail as a mileage record.

The task force urges the Committee on House Administration to report to the House its findings and recommendations not later than July 1, 1990, so that any new options for reimbursement can be implemented as soon as possible thereafter.

The task force also directs the Committee on Standards of Official Conduct to issue an advisory opinion to permit similar incidental use of campaign owned or leased cars for other purposes.

Finally, the task force recommends that clause 6 of Rule XLIII be amended to bring it into conformity with Advisory Opinion No. 6 of the Committee on Standards of Official Conduct. Clause 6 specifically prohibits a Member from expending funds from his campaign account that are not attributable to "*bona fide* campaign purposes."

Advisory Opinion No. 6 provides that, contrary to the language of clause 6, there are gray area expenditures that can be classified as either political or official, and that the definition of what is political is left to the Member. And yet, the word "political" is not used in the rule itself.

The change in clause 6 is intended only to clarify the original intent of the rule adopted in 1977. Current rules require that campaign funds be used solely for campaign purposes and specifically prohibit the use of campaign funds for personal or official purposes. The Select Committee on Ethics of the 95th Congress made clear in its *Final Report*, "The intent of this rule is to restrict the use of campaign funds to politically-related activities and thus to prohibit their conversion to personal use or to supplement official allowances. The rule should not be interpreted to limit the use of campaign funds strictly to a Member's reelection campaign * * * Thus, if a Member determines, for example, that advertisements in publications of civic organizations, the mailing of holiday greetings to constituents, or travel to meetings with local party officials would constitute a political expenditure" these would be allowed under the rule.

Thus the proposed change to allow expenditures for bona fide "political" as well as "campaign" purposes conforms the language of the rule to the original intent that campaign funds may be spent for the traditional politically-related activities of Members. It is not in any way intended to blur the bright line in the rules prohibiting the use of campaign funds for personal or official use.

As the Ethics Committee has made clear "* * * a bona fide campaign purpose is not established merely because the use of campaign money might result in a campaign benefit as an incident to

benefits personally realized by the recipient of such funds * * *. Any other interpretation * * * would open the door to a potentially wide range of abuse and could result in situations where campaign moneys were expended for the personal enjoyment, entertainment, or economic well-being of an individual without any clear nexus that the funds so expended achieved any policital benefit to the disburser (campaign organization) of the funds."

The intent of the change is to make clear that traditional politically-related activities are allowed under the rule and to underscore that campaign funds may not be used for personal or official use.

6. Citizens' Commission and Compensation

BACKGROUND

Under Article I, section 6, of the Constitution, "The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by law, and paid out of the Treasury of the United States."

The matter of establishing the pay of Members of Congress has been a troublesome one for Members since the beginning of the Republic. In the very first Congress, Representative James Madison proposed as one of the first 12 amendments to the Constitution an amendment which read quite simply:

> No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.

In defending the proposal on the House floor on June 8, 1979, Madison said of Congress' authority to set its own pay:

> Perhaps of all the powers granted, it is least likely to abuse; but there is a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets; there is a seeming indecorum in such power, which leads me to propose [this] change.

While the amendment was never ratified by the requisite three-fourths of the states, various alternative statutory pay procedures have been proposed and tried over the years. In more recent years, these have taken the form of presidential commissions to recommend salary levels for senior executive and judicial branch officials as well as Members of Congress.

The first such Commission on Executive, Legislative and Judicial Salaries was established in 1967 for the purpose of reviewing the salaries of Members of Congress, federal judges and top executive branch officials every four years and recommending any changes it determined were appropriate. The nine-member commission was to be composed of three members appointed by the President and two each to be appointed by the President of the Senate, the Speaker of the House, and the Chief Justice of the U.S.

After the commission reported its recommendations, the President was to recommend to the Congress whatever pay levels he deemed advisable. The recommendations were to take effect within

30-days unless Congress disapproved all or part of them, or enacted a different pay bill.

Since enactment of the Federal Salary Act of 1967, the Act has been amended numerous times. There have been seven commissions in all over the 22 year-period, only three of which have seen their recommendations enacted. Most recently, in February of 1989, Congress rejected a 51% pay increase recommended by the fiscal 1989 Quadrennial Commission.

CURRENT LAW

Under the 1967 Federal Salary Act, as amended, the Commission on Executive, Legislative and Judicial Salaries is charged with reviewing in every fourth year the rates of pay for Members of Congress (and certain other legislative branch personnel), Federal justices and judges, offices and positions under the Executive Schedule, and the Governors of the Board of Governors of the U.S. Postal Service.

The commission review is to be conducted to determine the appropriate pay levels and relationships between the various positions covered.

The commission is comprised of nine persons: three appointed by the President, two by the President of the Senate, two by the Speaker of the House, and two by the Chief Justice of the United States.

The commission is appointed for the fiscal year in which they are to make a report and are to report to the President no later than December 15th of that fiscal year.

The President must include in his budget message the following month his recommendations for pay for the positions covered by the commission report.

The President's recommendations become effective after 30 days unless Congress enacts a joint resolution of disapproval within that period.

The pay increases take effect on the first day of the first pay period after the end of the 30-day period.

The Executive Salary Cost of Living Adjustment Act of 1975 provides for annual automatic adjustments in the pay of Federal executives equal to the average percentage of the comparability adjustments in the rates of pay under the General Schedule. Such increases for employees under the General Schedule are recommended by the President and subject to disapproval by the Congress.

The General Schedule annual adjustment procedure, to which senior executives are now tied, was authorized in the Federal Pay Comparability Act of 1970. The Act requires the President to direct his pay agent to annually submit to him a report that compares the rates of pay of the statutory pay systems with the pay in private industry, based on the annual survey of the Bureau of Labor Statistics.

The Advisory Committee on Federal Pay, which was also created by the Act, advises the President on the pay adjustments recommended by his pay agent. The President could then determine that the recommended amount is inappropriate due to a national emer-

gency or other economic conditions, in which case he may submit to Congress an alternative pay plan.

ISSUES

This year the National Commission on the Public Service, chaired by Paul Volker, called the Nation's attention to what is saw as a "quiet crisis" in government. As the commission summed-up the crisis in its final report, *Leadership for America: Rebuilding the Public Service:*

> Simply put too many of the best of the Nation's senior executives are ready to leave government, and not enough of its most talented young people are willing to join.

And the Commission went on to observe that this erosion in the attractiveness of public service "undermines the ability of the government to respond effectively to the needs and aspirations of the American people, and ultimately damages the democratic process itself."

The Commission concluded on this point:

> Although the "quiet crisis" affects all levels of government, the Commission has been particularly concerned about quality and performance at the senior administrative and professional levels of the federal government. That is where America looks for leadership and where standards of government service may have their widest influence.

Similar concerns have been expressed this year by the President's Commission on Executive, Legislative and Judicial Salaries in its report, *Fairness for our Public Servants.*

Chief among the concerns of these commissions in being able to attract and retain highly-qualified individuals to public service has been the matter of inadequate compensation. As the President's quadrennial commission correctly observed:

> Most who seek or enter high public office do so despite rather than because of the salaries these positions pay. Much more important motivations are the pride, prestige and privilege of service, and the opportunity to contribute to the greater public good.

The Commission goes on to observe that while private sector wages have more than kept pace with inflation over the last two decades, the levels of salaries of senior officials in all three branches is only about 65–70% in constant dollars of what their 1969 salaries were for the same positions. As a result, Federal judges are resigning at a higher rate than ever before; the average tenure of Executive branch officials is only about 18 months; and many Members of Congress are retiring early in their careers due to financial pressures, and taking positions in the private sector.

This is the principal cause of the "quiet crisis" in government and should be a major cause of concern for all Americans who value professionalism and dedication from their public servants.

Directly related to this problem are the attempts by some top officials who remain in government to augment their salaries

through outside activities, simply to keep up with the rising cost of living. Not only does this detract from the time and energy they can devote to public service, but it often poses the appearance of conflict with their public duties. As the President's Commission on Federal Ethics Law Reform noted in its March, 1989 report entitled, *To Serve With Honor,* "there is an obligation in a public official to be sure his actions appear ethical as well as be ethical. The duty is to conduct one's office not only with honor but with perceived honor."

The perceptions which attend the practice of honoraria and other outside employment and the task force's recommendations are dealt with elsewhere in this report. The important point is that all three commissions which viewed these problems from different perspectives came to the basic conclusions that top public officials should be better compensated, that honoraria should be banned, and that outside employment should be more tightly restricted.

While all this seems self-evident, doing something about it is quite another matter given the political difficulties which have surrounded government pay since the beginning of the Republic. The multitude of government studies, commissions and salary mechanisms produced over the years to address these basic problems have met with only mixed success in the face of certain political realities.

The current system of tying senior salaries to the same percentage increase as those of other Federal workers has only reopened to political gamesmanship what was intended to be a more objective and automatic cost-of-living adjustment (COLA).

The resulting loss of several annual COLAs for senior officials has in turn placed the Quadrennial Commission on Executive, Legislation and Judicial Salaries in the near-impossible position of recommending politically unacceptable increases, simply to restore lost purchasing power. The recent failure of the 1989 Commission's recommendation of a 51% salary increase for senior officials in a single year is only the most recent example of the failure of the system.

RECOMMENDATIONS

The task force recommends a fundamental departure from the present system which responds to the public's demand for a fair, straightforward and accountable approach.

Citizen's Commission on Public Service and Compensation.—The task force recommends the reconstitution of the quadrennial pay commission into a new Citizens' Commission on Public Service and Compensation. Unlike its predecessor commissions which were comprised entirely of individuals appointed by the President, Speaker of the House, President of the Senate, and Chief Justice, five of the 11-member commission would be comprised of citizens drawn by lot from voter registration rolls. These five commissioners would be appointed by the Administrator of the General Services Administration under a procedure that would be designed to ensure the greatest geographic diversity.

Of the remaining six members, two would be appointed by the President, one by the President of the Senate, one by the Speaker

of the House, and two by the Chief Justice. The President would appoint one of the commission members to serve as chairman. They would be appointed without regard to political affiliation from among persons with experience or expertise in such areas as government, public administration and personnel management. None of the commission members (or members of their immediate family) could be a lobbyist or employee of the Federal government.

The task force appreciates that this bold approach to such an important endeavor may cause concerns given the uncertainty of membership.

However, the task force would point out three things in defense of the proposal. First, past commissions have not been particularly successful despite the high positions of those making the appointments, the high level of prestige and expertise of the appointees, and the high quality of their final reports and justifications for their recommendations. As has already been mentioned, only three of the seven commissions have succeeded in having their recommendations enacted into law.

Second, the task force proposal is based on the Washington State system which entrusts a citizens' commission with even greater authority, and yet which has met with much greater success than the present approach.

The Washington Citizens' Commission on Salaries for Elected Officials is comprised of 15-members, of whom eight are randomly selected from voter registration rolls, one from each of the congressional districts. The other seven members are jointly selected by the Speaker of the House and President of the Senate. The latter appointees must possess experience in the field of personnel management and be from the sectors of labor, business, private higher education, personnel management and the legal profession.

Since the enactment of this system in 1986, the two proposals of the commission in 1987 and 1989 have been successfully implemented. The first resulted in a 25% pay increase for the governor and Supreme Court and a 14% increase for legislators. The second provided a 21% increase for the State legislature.

The third point the task force wishes to make in defense of the citizens' commission approach is that it is a necessary first step in restoring public confidence in the process. A citizens' commission can help to open the door of government to more direct citizen participation.

The commission would be responsible for recommending appropriate salaries for the same top officials now covered by the existing Federal Salary Act. This includes 834 executive branch officials, 549 legislative branch officials, and 1,115 judicial branch officials. In addition, the task force recommends that the new commission not only look at salaries, but the overall problems of recruiting and retaining senior officials and of maintaining appropriate ethical standards. While the proposed pay authority of the commission only covers the most senior officials in the three branches, the task force proposes that the review of personnel recruitment, retention and ethical problems be government-wide as the scope of the term "public service" in its title implies.

The first commission under the new law would be appointed in fiscal 1993 (not later than February 15, 1993), and subsequent com-

missions would be appointed every fourth fiscal year thereafter. The commission would report its recommendations to the President at a date designated by him, but not later than December 15 after the close of the fiscal year in which the commission is appointed.

After considering the commission's report, the President would then be required to submit his own recommendations to Congress in connection with his budget in early January. The December and January reporting deadlines for the commission and President are the same as the present Quadrennial Commission procedure, although it is no longer necessary for the President's recommendations to be submitted at the same time as the budget.

Furthermore, there are criteria specified for the President to use in making these recommendations, including, after considering the commission's report, fairness, the prevailing market value of the services rendered, and the overall economic and fiscal conditions of the economy and the Federal government.

Finally, the recommendations of the commission and President shall be equal for: (a) the Vice President, the Speaker and the Chief Justice; (b) the cabinet, other executive level I positions, the majority and minority leaders of the House and Senate, and the President pro tempore of the Senate; and (c) Members of Congress, Federal district judges, and other executive level II positions.

The task force recommends several important changes in the present procedure which it feels are necessary to restore public confidence in this salary-setting process. First, the commission could recommend that any salary increases be spread over a four fiscal year period instead of being confined to just one year as is now the case. Had the 1989 Quadrennial Commission had this option and recommended 12% annual increases for the affected officials over four-years, its report might have met with less resistance.

Second, the task force recommends that any salary increases recommended by the President could not take effect until there has been an intervening election of U.S. Representatives after the approval of the recommendation. Moreover, the task force recommends that this same Madisonian approach be applied to any other salary increase for top officials (other than annual COLAs which would already be provided for by law under this Act). The task force strongly believes that both Members and the public will be more comfortable and satisfied with a system which prevents Members from voting themselves any pay raise. The new statutory requirement would only permit such increases for future Congresses.

Third, the recommendations of the President would require the affirmative vote of both Houses of Congress instead of taking effect automatically unless disapproved by both Houses as is now the case. The task force believes the public expects and deserves this kind of accountability from its Representatives in the Congress.

Under the proposed procedure, a joint resolution of approval of the President's pay package could be called-up as a matter of highest privilege in either House by the majority leader or his designee within 60 calendar days of its submission by the President. The task force wishes to make clear that this 60-day period for privileged consideration would not preclude consideration at a later date of the President's proposal or any alternative so long as it is

under the usual rules of the House concerned. The 60-day period simply allows for expedited consideration of an approval resolution.

Morever, the approval procedure must be completed before the earliest effective date of the recommendations. If the President's proposal or another plan is considered after the 60-day period, it could still not become effective prior to an intervening election. For instance, if it is voted on during a lame-duck session, it could not take effect in the succeeding Congress.

In summary, the task force is confident that the new citizens' commission and the new process for considering its recommendations overcome many if not most of the problems which have plagued the present system. The principal challenge is to restore the public's faith in the process. By making the people a part of that process, by making their congressional Representatives accountable under it, and by delaying any salary increases until after an election, that challenge has been met.

COLA Restorations.—The task force recommends that the 1989 4.1% comparability adjustment which went to other Federal workers under the General Schedule be restored for the top government officials who were denied the increase. The task force recommends that the 1990 3.6% comparability adjustment which has been approved for other Federal workers also be granted to senior officials.

In both instances, even though the senior officials are entitled to the same annual adjustment, on equity grounds and under current law, provisions were attached to appropriations laws to separate them from these authorized annual increases.

The bill includes language which requires that Federal judges receive the COLA restorations. Also, neither of the two COLA restorations will take effect until the current sequestration of funds for Federal programs, pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 is rescinded.

Future COLA Adjustments.—Because the current system of considering comparability adjustments for top officials is tied to the procedure for other Federal workers under the General Schedule, these senior officials in all three branches have been the most vulnerable to and the most hurt by riders to appropriations bills to deny them COLAs when other Federal employees receive theirs. This is the single, most important explanation for the growing disparity between top salaries in government and the private sector, and the 38% loss of purchasing power by these officials since 1969.

For this reason, the task force recommends that, beginning in 1991, a separate index be used to determine whether or not there should be an annual salary adjustment for these top officials. Specifically, the task force recommends that prospective adjustments be pegged to the rate of change in the Economic Cost Index (ECI), minus one-half a percent (0.5%). The ECI is a quarterly index of wages and salaries for private industry workers published by the Bureau of Labor Statistics.

Since the statutory effective date for comparability adjustments is October 1, the task force recommends that, in determining the percent of change, the base quarter ending the previous December should be compared to the base quarter ending the next previous December. In other words, in determining the first comparability adjustment under this new system which would be effective on Oc-

tober 1, 1991, the ECI as of December 31, 1990 would be compared with that of December 31, 1989.

The task force further recommends that any annual adjustment shall not exceed 5%, or be less than 0. Thus, while the average annual ECI percentage change in wages and salaries over the last decade was 5.6%, the subtraction of a half-percentage point and the imposition of a 5% cap would bring that annual average down to 4.1%. That is a half-percent less than the 4.6% average annual cost of living increase for that 10-year period.

For the years 1986–90, the ECI (−0.5%) was 3.6%, 3.6%, 2.6%, 2.8%, and 3.6%, respectively. Coincidentially, the 1990 figure is the same as the 3.6% increase going to Federal workers under the General Schedule next January, as enacted by the Treasury, Postal, General Government Appropriations Act, 1990.

In conclusion, the task force believes this new index is both equitable and workable. By separating top government officials from the method for adjusting the salaries of Federal workers under the General Schedule, both should be better served and protected from political manipulation. If anything, the separate systems should enable Congress to more dispassionately and objectively consider the appropriate salary levels for other Federal workers.

The 1991 Increase.—The task force recommends that the top federal officials under the Quadrennial Commission's purview, (top executive branch officials, Members of Congress, Federal judges and others) should receive a 25 percent salary increase as part of a comprehensive ethics package which both abolishes honoraria and imposes strict new limits and restrictions on any outside income and employment.

The increase is approximately half of what was recommended by the 1989 Quadrennial Commission. With the two COLA restoration, the 1991 increase will raise the salaries of House Members and other top executive and judicial branch officials now earning $89,500 to $120,800. If the salaries of these officials had simply kept up with inflation since 1969, their salaries would now be $135,800.

The task force wishes to emphasize that it considers the salary provisions of its recommendations to be an integral part of the total ethics package being proposed. Serving as a senior government official is and should be a full-time job and should be compensated accordingly. Along with adequate compensation there would be less need to supplement income from outside sources.

The task force's proposed bans on honoraria and on practicing a profession for compensation outside the government are intended both to better focus the attention of government officials on the obligations of public service and to restore public confidence in government. The task force also believes that putting the salary system for such officials on a more realistic level should ensure that the government will continue to attract and retain high caliber leaders to carryout the important work of government.

Work Performed by Senior Judges.—The task force also recommends as part of its ethics reform package the enactment of a bipartisan proposal introduced by Rep. Kastenmeier (D-WI) and Rep. Moorhead (R-CA) to require that judges in the senior status must be certified as having performed a certain amount of work each year in order to receive any salary increase.

Senior judges are those individuals in a semi-retired status who stay on the bench but are not expected to work fulltime. Certification would be made by the chief judge of the circuit, and in most cases is based on a caseload involving courtroom participation equal to what an average active judge would perform in three months. The three month work obligation could also be satisfied by engaging in substantial judicial duties not involving courtroom participation.

Other Federal Workers.—While the task force did not consider it to be within its mandate to conduct a thorough review of government pay systems at all levels, let alone to make specific recommendations, it is nevertheless cognizant of the need to maintain adequate pay levels for all government workers.

In this regard the task force strongly urges the Administration and appropriate committees to work together in this Congress to ensure that other government employees are better compensated, and particularly to review the General Schedule pay system. The task force is especially concerned that Senior Executive Service (SES) and Senior Foreign Service employees' salaries should reflect the increases recommended for top government officials by the task force.

The task force commends President Bush on his senior executive salary message of July 7, 1989, in which he called for a significant pay increase for senior executives to narrow the gap between public and private sectors in order "to attract and retain the skilled and motivated senior executives necessary to direct the complex, wide-ranging and critical functions of the Federal Government."

The task force also asks that serious consideration be given to raising the present pay cap on administrative law judges (ALJs) and those who serve on Boards of Contract Appeals (BCAs). The cap has resulted in a disparity in pay between the ALJs and BCAs and that of senior Federal attorneys. This in turn makes it difficult to induce federal attorneys and qualified lawyers in private practice to join the administrative judiciary. The ALJs have proposed a three-tier pay schedule (85 percent, 95 percent, and 100 percent of Executive Level IV) to recognize the additional supervisory and administrative duties performed by some judges and the variation and complexity of cases.

The task force observes that both the Volcker Commission on the Public Service and the 1989 Quadrennial Commission recommended that the pay inequities among the SES and ALJs be corrected.

The task force is also aware that the National Association of Chapter 13 Trustees, who administer the bankruptcy plans involving small businesses and individuals, have requested that the pay cap for standing trustees be raised from GS–16 to GS–17, and that a benefit allowance be authorized.

Standing trustees' pay has not increased significantly in ten years, while their caseload has grown substantially due to the 1986 bankruptcy amendments. The task force has been informed that there would be no cost to the Federal Government due to such a change since the trustees are paid from a percentage of funds paid by the debtor and administered by the Trustee in bankruptcy

cases. The Executive Office for the U.S. Trustees at the Justice Department would administer the proposed benefit allowance.

Finally, but not least, the task force strongly urges the Committee on House Administration to thoroughly review the adequacy of the clerk hire allowance in attracting and retaining qualified staff personnel in the House. The task force is concerned that the average tenure of legislative assistants in the House is less than two years. The loss of experienced staff at mid-salary levels in the House due to limited resources makes it difficult to maintain legislative continuity in congressional offices, and the House in turn suffers as an institution.

SECTION-BY-SECTION ANALYSIS

Government Ethics Reform Act of 1989

TITLE I—LIMITATIONS ON OUTSIDE EMPLOYMENT AND ELIMINATION OF HONORARIA

Limitations on Outside Earned Income and Employment (Sec. 101)

Section 101 adds a new Title V to the Ethics in Government Act of 1978 to establish government-wide (except the Senate) limitations on outside earned income and employment, and to abolish honoraria.

Outside Earned Income and Honoraria

Proposed section 501 provides that a Member, officer, or noncareer employee of any branch of the government paid at the GS–16 salary rate or above may not have outside earned income in a calendar year in excess of 15 percent of the salary for Level II of the Executive Schedule.

Subsection (b) provides that no Member, officer, or employee of any branch of the government may receive any honoraria. Subsection (c) provides that any payment in lieu of honoraria which is paid on behalf of a Member, officer, or employee to a charitable organization shall be deemed not to have been received for income tax or pension purposes. Any such payment made to charity may not exceed $2,000 or be made to a charitable organization from which the individual or any immediate family member derives any financial benefit.

Outside Employment

Proposed section 502 provides that a Member, officer, or noncareer employee of any branch of government paid at the GS–16 salary rate or above shall not (1) affiliate with or be employed by a firm for compensation to provide professional services which involve a fiduciary relationship; (2) permit their name to be used by any such firm or other entity; (3) practice a profession for compensation which involves a fiduciary relationship; (4) serve for compensation on the board of directors of any association, corporation, or other entity; or (5) receive compensation for teaching without the prior notification and approval of the appropriate ethics office.

Administration

Proposed Section 503 provides that the limitations on outside earned income and employment are to be administered by and subject to the rules and regulations of the House or Senate ethics committee, the agency ethics official pursuant to regulations issued by the Office of Government Ethics, and the Judicial Conference of the United States with respect to officers and employees under their jurisdiction.

Civil Penalties

Proposed Section 504 provides a maximum civil penalty of $10,000 or the amount of the compensation received for the prohibited conduct, whichever is greater, for violations of the outside employment and earned income restrictions. Subsection (b) provides that the appropriate ethics office may render advisory opinions interpreting these restrictions, and any individual who acts in good faith in accordance with those advisory opinions shall not be subject to any civil sanction under the Act.

Definitions

Proposed Section 504 defines various terms used in the new title V. The term "officer or employee" is defined to mean any officer or employee of the government (except the Senate), excluding any whose rate of compensation is less than the minimum rate payable for grade GS-16 of the General Schedule. With respect to honoraria, the term means any officer or employee, regardless of salary level.

The term "honoraria" means a payment of money or anything of value for an appearance, speech or article, excluding any payment of actual and necessary travel expenses incurred by the individual (and one relative). The term "travel expenses" means the cost of transportation and the cost of meals and lodging while away from the individual's residence or principal place of employment.

The term "charitable organization" means an organization described in section 170(c) of the Internal Revenue Code of 1986.

Conforming Amendments

Subsection (b) conforms current limitations on honoraria and outside earned income in the Ethics in Government Act of 1978, the Federal Election Campaign Act of 1971, and the Supplemental Appropriations Act for FY 1983 so that they apply only to the Senate, and conforms the definition of honoraria in the financial disclosure requirements.

Tax Treatment of Amounts Paid to Charity (Sec. 102)

Section 102 amends section 7701 of the Internal Revenue Code of 1986 by inserting a new subsection to provide that any payment which is paid in lieu of an honorarium to a charity shall not be treated as "received" by the officer or employee for income tax purposes, and no deduction shall be allowed for such individual under any provision of the tax code.

Tax Rollover Legislation (Sec. 103)

Section 103 amends the Internal Revenue Code of 1986 to provide a deferral of capital gains taxes on assets which must be divested by executive branch officials to avoid conflicts of interest under federal laws and regulations provided they are reinvested in a neutral investment. Any such sale or disposition of property must be pursuant to a "certificate of divestiture", a written determination issued by the appropriate agency ethics official that divestiture of specified property is reasonably necessary to comply with an executive order relating to conflict of interest rules.

Effective Date (Sec. 104)

Section 104 provides that the amendments on outside earned income and employment shall take effect on January 1, 1991. This section also provides that these amendments shall cease to be effective if the provisions of the Act relating to compensation of Members are subsequently repealed, in which case the prior laws shall be deemed to have been reenacted. The amendments on capital gains deferral apply to any assets sold after the date of enactment.

TITLE II—FINANCIAL DISCLOSURE

Title II amends the financial disclosure provisions of the Ethics in Government Act of 1978 applicable to all three branches of government.

Legislative Personnel (Sec. 201)

Coverage

Subsection (a)(1) provides that candidates who must file disclosure reports in any given year, and have not as yet filed, must file no later than 30 days prior to an election, rather than seven days. Subsection (a)(2) repeals obsolete provisions relating to the voluntary filing of termination reports, candidates required to file reports in 1978, and a 1980 General Accounting Office report.

Contents of Report

Subsection (b) makes the following changes in the reporting requirements:

Income.—The threshold for reporting income is increased from $100 to $200. Effective January 1, 1991, the source, date, and amount of any payment in lieu of honoraria donated on behalf of a Member, officer, or employee to a charitable organization must be disclosed. A corresponding list of the recipients of such payments must be filed on a confidential basis with the Standards Committee.

Gifts.—The two categories of gifts (tangible gifts and gifts of transportation, lodging, food and entertainment) are collapsed into one, and the threshold for reporting gifts is increased from $100 to $200. Any gift with a value less than the nominal value as defined by the rules of the House or Senate need not be aggregated.

Reimbursements.—The reporting of reimbursements is amended to lower the reporting threshold from $250 to $200, and to require

disclosure of a travel itinerary and the dates and nature of expenses provided.

Liabilities.—The exemption for reporting liabilities owed to a relative is amended to apply only to liabilities owed to the spouse, parent, grandparent, brother, sister or child of the reporting individual or of his spouse.

Categories of Value.—The categories of value for reporting assets, liabilities and transactions are changed as follows: (A) not more than $15,000; (B) $15,000 to $50,000; (C) $50,000 to $100,000; (d) $100,000 to $250,000 (E) $250,000 to $500,000; (F) $500,000 to $1,000,000; (G) greater than $1,000,000.

Spousal Honoraria.—The source and amount of any honorarium earned by the spouse must be reported.

Alternative Forms.—A new provision is added to provide that an individual may supply the required information on a different form, pursuant to rules or a specific determination by the ethics committees, and to clarify that specific dollar amounts may be indicated in lieu of categories of value on any report form.

Qualified Blind Trust

Subsection (c) provides that the category of value of the Total assets of a blind trust must be reported, in addition to income from the trust as required under current law. The requirements for a qualified blind trust are amended to require that the trustee must be a financial institution, a law firm, a certified public accounting firm, a brokerage firm, or an investment advisor, and not an individual or entity owned entirely by an individual. Additional requirements are established to assure the independence of the trustee from the reporting individual any interested party by prohibiting current or past affiliations with the trustee or any employee of the trustee.

Subsection (c)(3) provides that the ethics committees may exempt from reporting the financial interests held by a regulated investment company, or a pension, profit-sharing or other deferred compensation plan. This provision is intended to clarify that disclosure would not be required of the underlying assets of mutual funds when the portfolio is available in standard reference manuals, or of a widely-diversified pension plan that is managed independently of the reporting individual.

Termination Reports

Subsection (d) provides that Members, officers and employees must file a report by the later of May 15 or the 30th day after they leave office or after termination of employment. The report would cover the preceding calendar year, if the annual report was not yet filed, and the period up until termination.

Public Availability

Subsection (e) extends the time within which reports must be made available for public inspection from 15 days to 30 days after they are filed.

Review and Compliance Procedures

Subsection (f) provides that the House and Senate ethics committees shall assess a $200 fine on any individual who files a report later than 30 days after the due date, including any extensions of the due date granted by the committee. This subsection also requires the committees to establish procedures to ensure that each disclosure statement is reviewed within 60 days after it is filed.

Civil Penalties

Subsection (g) increases the civil penalty for knowing and willful failure to file or falsification of a disclosure statement from $5,000 to $10,000. The penalties for disclosure of information respecting a qualified blind trust between the trustee and the reporting individual are increased from $5,000 to $10,000 for knowing disclosure and from $1,000 to $5,000 for negligent disclosure. The penalty for unlawful use of the disclosure statements is increased from $5,000 to $10,000.

Candidates

Subsection (h) amends the definition of a candidate to conform to the definition in the Federal Election Campaign Act.

General Accounting Office Study

Subsection (i) requires the GAO to conduct a study on the implementation of the amended disclosure law by December 31, 1992.

Executive Personnel (Sec. 202)

Section 202 provides for the executive branch the same amendments respecting the contents of reports, qualified blind trusts, and civil penalties provided for the legislative branch. Other amendments that affect only the executive branch follow:

Coverage

Subsection (a) includes civilians in the Executive Office of the President (other than Special Government employees) who hold a commission of appointment from the President on the list of those required to file a disclosure statement. This section also repeals the requirement that all individuals performing staff functions for advisory committees file reports, thus limiting coverage only to those at the GS–16 salary rate or above.

This subsection also amends the filing deadline for termination reports to May 15 or 30 days after the individual leaves office, whichever is later.

Public Availability

Subsection (d) makes minor changes in the current exemption from disclosure of reports filed by individuals engaged in intelligence activities. This section also eliminates the current requirement that the official position description for the reporting individual's office, if available, be provided along with the disclosure statement.

Confidential Reports

Subsection (g) reauthorizes the executive branch confidential reporting system and includes special government employees within the scope of persons who may be required by the Office of Government Ethics to file a confidential financial disclosure report. It also clarifies that nothing in this title shall be interpreted to prevent the appropriate supervising ethics office from requiring personnel in the judicial branch or in the legislative branch to submit confidential financial statements that supplement the public reports required under this title.

Judicial Personnel (Sec. 203)

Section 203 provides for the judicial branch the same amendments respecting the contents of reports, qualified blind trusts, public availability, review and compliance procedures, and civil penalties provided for the legislative branch.

Effective Date (Sec. 204)

Section 204 provides that the amendments made by this title shall apply to the financial disclosure statements filed after December 31, 1990.

TITLE III—CITIZENS' COMMISSION ON PUBLIC SERVICE AND COMPENSATION

Citizens' Commission on Public Service and Compensation (Sec. 301)

The periodic study of salaries of the top officials in the three branches will no longer be conducted by the quadrennial Commission on Executive, Legislative, and Judicial Salaries. The Citizens' Commission on Public Service and Compensation, which will have basically the same responsibilities with regard to the study of pay, will differ in composition and will have additional functions.

Membership

Subsection (b) provides that the Citizens' Commission shall be composed of 11 members (as opposed to nine in the Commission on Salaries): two appointed by the President of the United States, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and two appointed by the Chief Justice of the United States. These six members of the Commission, chosen without regard to political affiliation are expected to have experience or expertise in such areas as government, personnel management, or public administration.

The remaining five members are to be selected through a procedure, to be established by the Administrator of General Services, under which the members shall be chosen, by lot, from among names randomly selected from voter registration lists and providing the greatest possible degree of geographic diversity. None of the members may be officers or employees of the Federal Government. Also, they may not be individuals who are required to register under the Federal Regulation of Lobbying Act, or relatives of such employees, officers, or individuals.

The President will designate a chairperson from among them. A vacancy in membership will be filled in the same manner as the original appointment was made. Each member will be eligible to receive $100 per day for each day that member is engaged in Commission business. Travel expenses and a per diem allowance will also be paid.

The Citizen's Commission will also follow a quadrennial cycle, being activated during fiscal year 1993 and each fourth fiscal year thereafter. The term of the members extends through the fiscal year in which they are appointed, unless the President calls for a reporting date which would require the members to continue their work into a subsequent fiscal year. The term of the members shall begin no later than February 14, 1993.

Conforming Amendments (301. (c) and (d))

These sections contain conforming language.

Commission's Pay Report (301(e))

The Citizens' Commission is required to submit its report on pay rates to the President at a date designated by the President or no later than the December 15 following the close of the fiscal year in which the Commission was activated.

President's Pay Recommendations (301(f))

The President shall submit his recommendations on the first Monday after January 3 of the first calendar year beginning after the date on which the Commission submits its pay report. The President's specific recommendations on pay levels are to be those which the President "considers to be fair and reasonable in light of the Commission's report and recommendations, the prevailing market value of the services rendered in the offices and positions involved, the overall economic condition of the country, and the fiscal condition of the Federal Government." The last three considerations represent new language with regard to the elements which the President is directed to consider.

Effective Date (301(g))

Before the recommendations may take effect, a bill or resolution must be enacted into law. During the 60-day period following transmittal of the President's recommendations, it shall be in order in each House of Congress to consider a privileged bill or resolution approving such recommendations in their entirety. It is required that an election of Representatives (on the Tuesday following the first Monday of November in any even-numbered calendar year) take place between the date on which the congressional approval becomes law and the new rates take effect.

Conforming Amendments (301(h))

This section amends section 225(j) for the purpose of conformance.

Requirements Applicable to Recommendations (301(i))

This section sets forth certain requirements to be met by the Citizens' Commission and by the President in submitting their recommendations:

Effective date stipulation

An effective date must be specified by the Commission and by the President. The proposed effective date "may occur no earlier than January 1 of the second fiscal year, and no later than December 31 next following the close of the fifth fiscal year, beginning after the fiscal year in which the Commission conducts its review . . ." For example: if the Citizens' Commission reported December 15, 1993, if the President transmitted his recommendations January 10, 1994 (January 3, 1994 falling on a Monday), if the Congress approved those recommendations prior to the November election of 1994, the earliest effective date could be January 1, 1995. If the Congress should fail to act before the next intervening election, none of the recommendations could take effect. The new mechanism would require that the latest effective date for those recommendations would be December 31, 1998.

Pay parity provisions

The rates of pay recommended for the Speaker of the House of Representatives, the Vice President of the United States and the Chief Justice of the United States shall be equal.

The rates of pay recommended for the majority and minority leaders of the Senate and the House of Representatives, the President pro tempore of the Senate, and Level I of the Executive Schedule shall be equal.

The rates of pay recommended for a Senator, a Member of the House of Representatives, the Resident Commissioner from Puerto Rico, a judge of a district court of the United States, a judge of the United States Court of International Trade and Level II of the Executive Schedule shall be equal.

The rates recommended by the President are not required to be the same as those recommended by the Commission.

Additional Function (301(j))

The Citizens' Commission shall also conduct reviews relating to recruitment and retention problems as well as other public policy issues involved in maintaining appropriate ethical standards, with respect to any offices or positions in the Federal public service.

Certain other pay adjustments (301(k))

This section requires the passage of an intervening congressional election between the enactment of a pay increase and the date on which it takes effect. This requirement does not apply to recommendations by the Citizens Commission on Public Service and Compensation (which already requires an intervening election), a cost of living increase authorized under section 304, and the COLA restoration in section 302.

Restoration of Comparability Adjustments (Sec. 302)

(302(a)). Fiscal Year 1989. Section 620(b) of the 1989 Treasury, Postal Service, General Government Appropriations Act excluded all positions under the purview of this act, with the exception of Levels IV and V of the Executive Schedule (and any related salaries) from receiving the 4.1% increase effective January 1, 1989. Those excluded positions will receive a 4.1% increase effective the beginning of the pay period beginning after enactment of this Act.

Fiscal Year 1990. The bill sets aside section 619(b) of the 1990 Treasury Appropriations Act. Those positions under this Act, which had been denied the prospective January 1, 1990 comparability adjustment will receive the 3.6% increase effective January 1, 1990.

(302(b)). The salary rates of Senators, the President pro tempore of the Senate and the majority and minority leaders of the Senate are not affected by section 302(a) or 302(b).

(302(c)). The section provides a specific enactment of the comparability adjustments for Federal judges and Justices of the Supreme Court.

(302(d)). This section prevents any comparability adjustment from occurring until the sequestration of funds for Federal programs, currently in effect pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, is rescinded.

Salary Levels of Senior Government Officials (Sec. 303)

Executive Branch (303(a)(1))

Effective the first pay period beginning on or after January 1, 1991, the basic pay for individuals on the Executive Schedule will be increased by 25%. This is identical to the increase proposed by the President in his July 1989 message proposing the "Senior Executives Salary Act of 1989." (H. Doc. 101-79)

Legislative Branch (303(a)(2))

Effective the first pay period beginning on or after January 1, 1991, the basic pay of the Legislative Branch offices and positions, under the Commission's study will receive an increase of 25%. The exceptions are Senators, President pro tempore of the Senate, and the majority and minority leaders of the Senate.

Judicial Branch (303(a)(3))

Effective the first pay period beginning on or after January 1, 1991, the basic pay of the Chief Justice of the United States, an associate justice of the Supreme Court of the United States, a judge of a United States circuit court, a judge of a district court of the United States, and a judge of the United States Court of International Trade shall be increased by 25%. This was the rate of increase recommended by the President in his April 1989 transmittal proposing the "Judicial Salary Act of 1989." (See H. Doc. 101-46).

Coordination Rule (303(b))

If the 25% increases are to be effective the same date as any other pay adjustment affecting these positions, the 25% increase is to considered to be in effect first.

Revision in Method by Which Annual Pay Adjustments for Certain Executive, Legislative, and Judicial Positions are to be Made (Sec. 304)

COLA rate determination: Employment Cost Index (ECI)

Currently, under the provisions of P.L. 94–84, the positions under the Commission's review are eligible to receive adjustments in basic pay at the same rate and at the same time as the comparability adjustments for the General Schedule. This Act provides annual comparability adjustments for these officials. However, the rate of adjustment would correspond to the percent of change in the Employment Cost Index (ECI), less one-half of one percent. The ECI, as defined in the Act, is the quarterly index of wages and salaries for private industry, as published by the Bureau of Labor Statistics.

No rate of adjustment under this provision may be less than zero percent nor more than five percent.

Under the comparability pay statute (5 U.S.C. 5305(a)(2)), the effective date of the increase is October 1. In determining the percent of change in the ECI, the base quarter ending as of the immediately preceding December 31 will be compared to the ECI as of the prior December 31. For example, when determining the first increase for these positions as of October 1, 1991, the ECI for December 31, 1990 will be compared to that for December 31, 1989. The percent of change will be further reduced by one-half of one percent.

There is language in the section which brings current language into conformance with the new provision.

Effective Date

The effective date for the section 304 provision is January 1, 1991.

TITLE IV—MISCELLANEOUS STATUTORY CHANGES

Amendments to Title 18, United States Code, Conflict of Interest Laws (Sec. 401)

Compensation in Matters Affecting the Government

Subsection (a) amends section 18 U.S.C. 203 to treat officers and employees of the District of Columbia government and the Federal Government separately in the prohibition against receiving compensation for services rendered before a government agency on a matter in which the U.S. has an interest. The effect of this change is to only prohibit District Government employees from appearing before District Government agencies and courts, and Federal employees from appearing before Federal government agencies and courts.

This section also authorizes misdemeanor and civil penalties as sanctions for violations of 18 U.S.C. 203, while retaining and strengthening felony sanctions for willful violations of the law. The penalties in this and subsequent sections are one year imprisonment for a violation and five years for a willful violation, or fined in accordance with title 18 (double the defendant's gain or $250,000, whichever is greater), and a civil penalty of up to $50,000.

Practice before the Claims Court

Subsection (b) makes minor and technical amendments to 18 U.S.C. 204, which prohibits practice in the Court of Claims or Court of Appeals by Members of Congress, and authorizes misdemeanor and civil penalties as sanctions for violations of the law, while retaining and strengthening felony sanctions for willful violations.

Activities of Officers or Employees in Matters Affecting the Government

Subsection (c) amends 18 U.S.C. 205 to treat officers and employees of the District of Columbia government separately from officers and employees of the Federal Government in the prohibition against acting as agent or attorney, with or without compensation, for anyone in a matter before a Federal agency in the case of Federal employees, or a District government agency in the case of District employees. This section also changes penalties provisions as stated in the previous sections.

Disqualification of Partners and Employees

Subsection (d) amends section 207(g) of title 18 to strike the term "partner" and insert "general partner".

Acts Affecting a Personal Financial Interest

Subsection (e) amends 18 U.S.C. 208, which prohibits executive branch officials and District Government employees from taking any official action on a matter in which they have a personal financial interest, by amending the penalties provisions in conformance with the changes made in the preceding sections.

This section also broadens the authority for the issuance of exemptions or waivers from the financial conflict of interest requirements. The amendment allows the Office of Government Ethics, as well as an agency head, to issue regulations providing for exemptions of a general nature for interests that are too remote or too inconsequential to affect the integrity of one's services to the government. This subsection also authorizes waivers for advisory committee members where the appointing authority determines, after review of confidential financial disclosure forms, that the need for a member's expertise outweighs the potential for conflict of interest.

This subsection also provides an exemption from section 208 for certain conflicts of interest which arise because of one's birthright in an Indian tribe or other community or in an Indian allotment or claims fund if the matter does not involve such entity specifically as a party.

All certifications granting a conflict of interest waiver must be provided to the Director of OGE, who would be required to make them available to the public.

Salary of Government Officials and Employees

Subsection (f) amends 18 U.S.C. 209, which prohibits employees from receiving private compensation for their government duties, to authorize misdemeanor and civil sanctions as penalties for violations of the law, while retaining and strengthening felony sanctions for willful violations.

Injunctive Relief

Subsection (g) amends title 18 by adding a new section 216 to allow the Attorney General to seek injunctive relief to prohibit persons from engaging in conduct constituting an offense under the conflict of interests provisions in sections 203, 204, 205, 207, 208, or 209 of title 18.

Gifts to Supervisors (Sec. 402)

Section 402 amends section 7351 of title 5, United States Code to permit exceptions to the prohibition on gifts from employees to supervisors as set forth by regulations issued by the supervising ethics office.

Gifts to Federal Employees (Sec. 403)

Section 403 amends title 5 of the United States Code to add a new section respecting acceptance of gifts by Federal employees. It provides in general that no Member, officer, or employee of the government shall solicit or accept anything of value from any person seeking official action from, doing business with, or conducting activities regulated by the individual's employing agency, or whose interests may be substantially affected by the performance or nonperformance of official duties.

Subsection (b) authorizes the House and Senate ethics committees, the Office of Government Ethics, and the Judicial Conference to issue rules and regulations implementing this section and providing for reasonable exceptions, and provides that a Member, officer, or employee may accept gifts pursuant to rules or regulations established by his supervising ethics office.

President's Commission on Simplification of the Appointment Process (Sec. 404)

Section 404 establishes an advisory commission to study the best means of simplifying the presidential appointment process by reducing the number and complexity of forms to be completed by nominees. The commission is to report to the President within 90 days of its creation, and then cease to exist.

Federal Travel Acceptance Authority (Sec. 405)

Section 405 amends title 31 of the United States Code by adding a new section to provide for acceptance of travel and related expenses from non-federal sources by executive branch agencies. The

proposed new section authorizes the head of an executive branch agency or an employee to accept payment in cash or in kind from private sources in connection with meetings or similar functions relating to their official duties. Any cash payment would be credited to the agency's appropriation for travel expenses. In the case of a payment in kind, a pro rate reduction would be made in any government reimbursement to which the employee is entitled. An employee who accepts payment in violation of this section may be required to pay an equal amount to the Treasury, and lose his entitlement to payment from the government for such expenses.

The Administrator of General Services, in consultation with the Director of the Office of Government Ethics, is directed to promulgate uniform regulations to implement this travel acceptance authority.

Work Certification Requirement for Senior Judges to Receive Salary Increase (Sec. 406)

Section 406 amends title 28 of the United States Code to establish a work certification procedure for judges in senior status to receive salary increases. Certification is made by the chief judge of the circuit, and in most cases is based on a caseload involving courtroom participation equal to what an average active judge would perform in three months. The three-month work obligation could also be satisfied by engaging in substantial judicial duties not involving courtroom work.

The work certification requirement would apply to work performed after January 1, 1990.

Use of Government Vehicles (Sec. 407)

Section 407 provides that, notwithstanding any other law, the head of any government agency or other entity of each branch of government shall prescribe by rule conditions for the incidential use for non-official purposes of vehicles owned or leased by the government.

Elimination of the Excess Campaign Fund Grandfather Provision (Sec. 408)

Section 408 amends section 313 of the Federal Election Campaign Act of 1971 to repeal the provision that exempts Members in office on January 8, 1980 from the prohibition against conversion of excess campaign funds to personal use. The repeal would apply to those members in office after the 102nd Congress. The amendment would prohibit conversion to personal use of any amount in excess of the balance on hand as of the date of enactment.

Repeals and related modifications (Sec. 409)

This section repeals the Office of Federal Procurement Policy Act, sections 2397a and 2397b of title 10, section 801 of title 37, section 281 of title 18, and sections 603–606, 607, and 608(a) and (c) of the Department of Energy Organization Act.

TITLE V—AMENDMENTS TO RULES OF THE HOUSE

Acceptance of Gifts (Sec. 501)

Section 501 amends clause 4 of Rule XLIII to provide that a Member, officer, or employee of the House shall not accept gifts in a calendar year aggregating more than minimal value, as established by the Foreign Gifts and Decorations Act, from any person other than a relative. Gifts of personal hospitality of an individual and gifts with a fair market value of $75 or less are exempted.

The dollar limit in the gifts rule will be adjusted every three years in accordance with the automatic indexation provision of the Foreign Gifts and Decorations Act (5 U.S.C. 7342), which establishes the minimal value of gifts that may be accepted from foreign governments. The current minimal value is $180, and is expected to be increased to $200 by the Administrator of General Services effective January 1, 1990.

Subsection (a) also amends clause 4 to permit written waivers from the rule granted by the Committee on Standards of Official Conduct. Subsection (d) amends clause 4(e)(1) of Rule X to specifically authorize the Committee to give consideration to the request of any Member, officer, or employee for a waiver in exceptional circumstances with respect to the gifts rule.

Subsection (b) makes conforming changes in the definitions of terms used in the rule, and includes fiance or fiancee in the definition of a relative.

Subsection (c) amends Rule XLIII to add a new clause 12 to prohibit any employee required to file a financial disclosure statement from participating personally and substantially in any contact with any executive or judicial branch agency regarding non-legislative matters affecting any non-governmental entity in which he has a significant financial interest. This prohibition may be waived by the employing authority through a written waiver filed with the Standards Committee.

Subsection (e) directs the Standards Committee to amend its advisory opinions relating to the acceptance of gift (1) to prohibit lodging received as personal hospitality in excess of 30 days in a calendar year from any individual (other than a relative) unless a written waiver is granted by the committee; and (2) to exempt gifts of food and beverages not in connection with a gift of overnight lodging.

Use of Official Resources (Sec. 502)

Qualifications of Officers and Employees

Subsection (a) makes a conforming change to Rule XLI to include employees in the prohibition against prosecuting or having an interest in any claim against the government, and clarifies that this prohibition does not apply to cases in which employees are discharging their official duties. This section also deletes an obsolete reference to the Committee on House Administration.

Rights and Duties of Staff

Subsection (b) amends clause 8 of Rule XLIII to strengthen and broaden Member's accountability for the pay and performance of staff. The amendment provides that a Member or officer shall retain no one on his payroll who does not regularly perform official duties commensurate with the compensation he receives. The effect of the amendment is to include employees of officers and committees under the requirement that Members' personal office employees perform duties commensurate with compensation received, and to clarify that they shall perform official duties in the employing authority's offices.

In the case of committee employees, the amendment authorizes the chairman to require other Members to affirm in writing that employees under their direct supervision have met this criteria.

Paragraph (2) amends clause 9 of Rule XLIII to conform the existing staff anti-discrimination rules to the Fair Employment Practices Resolution adopted in the 100th Congress. The amendment adds handicap and marital or parental status to the prohibited discriminatory practices, and specifies that a person's domicile or political affiliation may be taken into consideration.

Paragraph (3) amends clause 6 of Rule XI to clarify that the existing prohibition against professional committee staff engaging in any work other than committee business applies only during congressional working hours. It also strikes redundant anti-discrimination rules applicable to committee staff.

Clarification of Political Activities

Subsection (c) amends clause 6 of Rule XLIII to clarify that campaign funds may only be used for bona fide campaign or political purposes. This change brings the rule into conformity with legislative history and interpretations of the rule by the Committee on Standards of Official Conduct and the Select Committee on Ethics of the Ninety-fifth Congress.

Use of Official Vehicles

Subsection (d) directs the Committee on House Administration to take necessary action relating to regulations which allow for the incidental use of government owned or leased vehicles pursuant to section 407. Similarly, subsection (e) directs the Standards Committee to issue an advisory opinion to provide that vehicles owned or leased by a Member's campaign committee may be used for nonpolitical purposes if such use is incidental.

Reforms Respecting the Committee on Standards of Official Conduct (Sec. 503)

Committee Composition

Section 503(a) amends clause (6)(a)(2) of Rule X to establish a three-term limit, in any period of five successive Congresses, on the length of service of any Member on the Committee on Standards of Official Conduct. Service performed for less than a full session or before the beginning of the first Congress after adoption of this rule would be disregarded.

Subsection (b) directs the Democratic Caucus and the Republican Conference to each nominate at the beginning of each Congress seven members to serve on the committee, thereby expanding the size of the committee to 14.

Disciplinary Procedures

Subsection (c) and (d) direct the committee to adopt rules governing disciplinary proceedings that separate the investigative and adjudicative functions within the existing committee structure. Subsection (c) states that a four- or six-member investigative panel must be established whenever the committee votes to undertake an investigation. The chairman and ranking minority member may only serve as non-voting ex officio members on any investigative panel.

Subsection (d) states that, upon completion of an investigation, an investitative panel shall report its finding and recommendations to the committee. If the investigative panel adopts a statement of alleged violation, the remaining members of the committee shall comprise a panel on adjudication to hold a disciplinary hearing to determine whether the counts in the statement have been proved. Any statement of alleged violation and response would be made public at the first public meeting or hearing on the matter after the subject of the investigation has had an opportunity to respond. If no public hearing or meeting is held, the statement of alleged violation and any written response would be included in the committee's final report to the House.

A quorum for an adjudicatory subcommittee for the purpose of taking testimony or conducting any business is a majority of the membership of the panel plus one.

The provisions of clause 5(d) of Rule XI authorizing chairmen and ranking minority members of subcommittees to appoint staff members would not apply to investigative and adjudicative subcommittee.

Administrative Actions/Report to the House

Subsection (e) amends clause 4(e)(1)(A) of Rule X to provide that a letter of reproval or other administrative action of the committee shall only be implemented as part of a report to the House. No action by the House need be taken in such instances.

Subsection (f) amends clause 4(e)(1)(B) of Rule X to require the committee to report to the House its findings of fact and recommendations, if any, upon the final disposition of any matter in which it has voted to undertake an investigation, and such action as it may deem appropriate.

Statute of Limitations

Subsection (g) amends clauses 4(e)(2)(C) of Rule X to establish a general statute of limitations for ethics matters considered by the committee. It may not investigate allegations of violations occurring before the third previous Congress unless it determines that such matters are directly related to, and constitute a continuous course of conduct in conjunction with, more current alleged violations.

Right to Counsel

Subsection (h) amends clause 1 of Rule XXXII to permit one attorney for a Member who is a respondent in a committee investigation to be on the Floor of the House when the committee's recommendation is under consideration.

Advice and Education

Subsection (i) directs the committee to establish an office on advice and education whose primary responsibilities shall include providing guidance to Members and employees on applicable rules and regulations, recommending to the committee formal advisory opinions of general applicability, and developing an educational program for Members and employees.

Effective Dates

Subsection (j) provides that those provisions respecting the Committee on Standards of Official Conduct shall take effect at the beginning of the 102nd Congress, except that the provisions relating to the right to counsel, a statute of limitations, and the office of advice and education shall take effect January 1, 1990.

Elimination of Honoraria and Limitations on Outside Earned Income and Employment (Sec. 504)

Honoraria and Outside Earned Income

Subsection (a) amends clauses 1 and 2 of Rule XLVII to provide that, beginning in 1991, a Member, officer, or employee of the House paid at the GS–16 salary rate or above may not have outside earned income in a calendar year in excess of 15 percent of the salary for Level II of the Executive Schedule. This subsection also provides that no Member, officer, or employee may receive any honoraria, beginning in 1991.

Proposed paragraph (3) of the Rule XLVII provides that any payment in lieu of honoraria which is made on behalf of a Member, officer, or employee to a charitable organization (as described in section 170c of the Internal Revenue Code) may not be received by such individual. This means that the honoraria donation is not deemed to be accepted for purposes of the rule or for income tax or pension purposes. Any such payment made to a charity may not exceed $2,000 or be made to a charitable organization from which the individual or a relative derives any financial benefit.

Proposed subsection (b) of the rule provides that a Member may not have outside earned income, including honoraria, in 1990 in excess of 30 percent of the per annum salary payable in 1989.

Limitations on Outside Employment

Subsection (b) amends Rule XLVII to provide, beginning in 1991, that a Member, officer, or employee paid at the GS–16 salary rate or above may not (1) affiliate with or be employed by a firm for compensation to provide professional services which involve a fiduciary relationship; (2) permit their name to be used by any such entity; (3) practice a profession for compensation which involves a fiduciary relationship; (4) serve for compensation on the board of

directors of any association, corporation, or other entity; or (5) receive compensation for teaching, without the prior notification and approval of the Standards Committee.

Subsection (c) defines various terms used in the rule and conforms the definition of income to reflect the elimination of honoraria. It also clarifies the copyright royalties exemption to specify that copyright royalties must be from established trade publishers and consistent with usual and customary contract terms.

Subsection (e) provides a conforming amendment.

Subsection (f) is a conforming amendment to clause 5 of Rule XLIII, effective in 1991, to provide that a Member, officer, or employee shall not accept any honoraria. The current rule prohibits acceptance of honoraria in excess of the usual and customary value.

Effective Date (p. 87)

Subsection (g) provides that the amendments made by this section shall take effect on January 1, 1990. It also provides that the amendments will cease to be effective if provisions of the Act relating to compensation are subsequently repealed, in which case the prior laws shall be deemed to have been readopted.

Restrictions on Travel Expenses (Sec. 505)

Section 505 directs the Committee on Standards of Official Conduct to amend its advisory opinions on acceptance of necessary travel expenses in connection with speaking engagements and similar events to prohibit acceptance of such expenses for more than four consecutive days in the case of domestic travel, and seven consecutive days in the case of foreign travel, excluding travel days. The Committee is authorized to grant an exemption from the limitation in exceptional circumstances. This section also directs the committee to permit acceptance of travel expenses for the spouse or other family member in connection with any substantial participation event or fact-finding activity.

Exercise of Rulemaking Powers (Sec. 506)

Section 506 provides that the provision of title I are enacted as an exercise of the rulemaking power of the House and shall be considered as part of the rules of the House.

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